

No. 13225

United States
Court of Appeals
for the Ninth Circuit.

CROFTON DIESEL ENGINE COMPANY,
INC., a Corporation, and AL LARSON BOAT
SHOP, a Corporation,

Appellants,

vs.

PUGET SOUND NATIONAL BANK OF TA-
COMA, a Corporation, and ETS-HOKIN &
GALVAN,

Appellees.

Apostles on Appeal

Appeal from the United States District Court for the
Southern District of California,
Central Division.

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PAUL P. O'BRIEN
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF PROCTORS

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For Appellee Puget Sound National Bank
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HERBERT R. LANDE,
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Los Angeles 13, Calif.

In the District Court of the United States, Southern
District of California, Central Division

In Admiralty—No. 12,271-WM

PUGET SOUND NATIONAL BANK OF TA-
COMA, a National Banking Corporation,

Libelant,

vs.

AMERICAN OIL SCREW FLYING CLOUD,
Her Engines, Tackle, Apparatus, Boats, Fur-
niture and Equipment; and PETER RADIC
and JOHN KREMENIC,

Respondents.

**LIBEL—FORECLOSURE OF PREFERRED
SHIP'S MORTGAGE**

To the Honorable the Judges of the United States
District Court for the Southern District of
California:

The libel of Puget Sound National Bank of Tacoma, a national banking corporation of the State of Washington, against the American Oil Screw Flying Cloud, her engines, tackle, apparatus, boats, furniture and equipment, and Peter Radic and John Kremenic, in a cause, civil and maritime, of foreclosure of a preferred ship's mortgage in rem and in personam, alleges as follows:

I.

That the libelant at all times mentioned hereafter

was [2*] and now is a national banking corporation of the State of Washington.

II.

That the American Oil Screw Flying Cloud is now, or during the pendency of process herein will be, within the Southern District of California and within the jurisdiction of this Honorable Court; that the respondents, Peter Radic and John Kremenec, are at this time also within the jurisdiction of this Honorable Court.

III.

That on or before August 18, 1948, said Oil Screw Flying Cloud was documented under the laws of the United States at Tacoma, Washington, and was given Official Number 255,923; that said vessel was at said time and is now owned by the respondents, Peter Radic, owning 50%, and John Kremenec, owning 50%.

IV.

That on the 18th day of August, 1948, the said respondents, Peter Radic and John Kremenec, executed a promissory note to the libelant in the sum of \$25,000.00; that said note bore interest at the rate of 5% per annum on the unpaid balance thereof until the same be paid; that said note was delivered to the libelant on or about August 18, 1948.

V.

That in order to secure the payment of the principal sum of said note with interest, and the amount

*Page numbering appearing at foot of page of original Certified Transcript of Record.

of both principal and interest, evidenced thereby, according to the true tenor and effect of said note, said respondents, Peter Radic and John Kremenec, the makers of said note, duly executed and delivered to the libelant, as mortgagee, a preferred ship's mortgage dated August 18, 1948.

VI.

That by the terms and provisions of said preferred ship's mortgage, the said Peter Radic and John Kremenec admitted that [3] they were justly indebted to the said mortgagee, the libelant, in the sum of \$25,000.00, and granted, bargained, sold and mortgaged to the libelant the whole of the said Oil Screw Flying Cloud, together with all of the masts, boats, engines, anchors, cables, chains, rigging, tackle, furniture, and all other necessities thereunto appertaining and belonging, provided, that if the said Peter Radic and John Kremenec should pay, or cause to be paid to the mortgagee, the libelant, said principal sum of \$25,000.00, with interest thereon at the rate of 5% per annum in installments, and if the said mortgagors should perform all and singular the covenants and promises in said note and in the said mortgage, then the said mortgage and the rights therein granted should cease and be void, otherwise to remain in full force and effect; that the date of maturity of said note and mortgage, upon which date all unpaid sums of interest and principal became due and payable, was October 31, 1949.

VII.

That at the time said preferred mortgage was executed, the said oil screw Flying Cloud was and still is duly documented under the laws of the United States of America, having its home port at Tacoma, Washington.

VIII.

That the said preferred mortgage was duly filed for record in the Office of the Collector of Customs of the Port of Tacoma, State of Washington, the home port of said vessel, and was duly recorded in said Office of the Collector of Customs in Book P-2, Instrument No. 40, at 4:15 p.m. on August 19, 1948, which said record shows the name of the vessel, the names of the parties to the mortgage, the time and date of the reception of the mortgage, the interests in the vessel mortgaged, and the amount and date of maturity of the mortgage, in accordance with Section 30, Subsection "C," of the Merchant Marine Act of the [4] United States of June 5, 1920.

IX.

That said preferred mortgage was endorsed upon the document of the oil screw Flying Cloud in accordance with the provisions of said Section 30 of the Merchant Marine Act of June 5, 1920, and was recorded as provided by said Section 30, Subsection "C," of said Merchant Marine Act; that an affidavit was filed with the record of said mortgage to the effect that the mortgage was made in good faith and without any design to hinder, delay

or defraud any existing or future creditors of the mortgagors, or any lienor of the mortgaged vessel. The said mortgage did not stipulate that the mortgagee waived the preferred status thereof. That all of the acts and matters required to be done by the said Merchant Marine Act of June 5, 1920, in order to give to the said mortgage the status of a preferred mortgage, were done, either by your libelant or by the Collector of Customs of the Port of Tacoma, Washington.

X.

That libelant is informed and believes and therefore alleges that the Collector of Customs of the Port of Tacoma, Washington, upon the recording of said preferred mortgage, delivered two (2) certified copies thereof to the mortgagors, the said Peter Radic and John Kremenec, and that the said respondents placed and retained one copy of said mortgage on board the oil screw Flying Cloud and libelant is further informed and believes and therefore alleges that the Master thereof caused the said copy and the documents of the said vessel to be exhibited to any person having business with the vessel, which might give rise to a maritime lien upon the vessel, and libelant is also informed and believes and therefore alleges, that at all times since then the Master of said vessel upon the request of any such person, has exhibited to him the documents of the vessel and the copy of the said preferred [5] mortgage placed on board thereof.

XI.

That the said preferred mortgage stated the interests of the mortgagors in the oil screw Flying Cloud, and the interests conveyed or mortgaged, and before the same was recorded said mortgage had been acknowledged by said Peter Radic and John Kremenec before a Notary Public authorized by the laws of the State of Washington to take acknowledgments of deeds within the said State.

XII.

That on August 18, 1948, and ever since then, the libelant has been and is now the holder of the aforesaid note; that since October 31, 1949, the respondents have failed and refused to pay to the libelant the balance of principal and interest, as provided therein; that there is now due, owing and payable from the respondents Peter Radic and John Kremenec to the libelant, the sum of \$20,267.40 with interest thereon at the rate of 5% per annum from October 31, 1949; that libelant has demanded payment of said sum, but the respondents Peter Radic and John Kremenec have failed and refused to pay the same, or any part thereof.

XIII.

That the said preferred mortgage provided in part, that if default be made in any of the installments as provided in said promissory note, that the whole sum of principal and interest, without notice, shall become due at the option of the mortgage, and suit may be immediately brought to foreclose said

mortgage; that said preferred mortgage and note also provided, that if suit be brought to enforce payment of the sums due thereunder, the makers of said note and the mortgagors under said preferred mortgage agreed to pay a reasonable attorney's fee to the holder of the note, libelant herein, and that the said preferred mortgage was also given to secure the payment of any such sum.

For a Second Cause of Action, the libelant Puget Sound National Bank of Tacoma, a national banking corporation of the State of Washington, alleges as follows:

I.

Libelant refers to and incorporates herein Paragraphs I, II and III of the First Cause of Action herein.

II.

That on the 18th day of August, 1949, said respondents Peter Radic and John Kremenec executed a promissory note to the Kazulin Cole Shipbuilding Corporation in the sum of \$10,000.00; that said note bore interest at the rate of 6% per annum on the unpaid balance thereof until the same be paid; that said note was delivered to Kazulin Cole Shipbuilding Corporation, on or about August 18, 1948.

III.

That in order to secure the payment of the principal sum of said note with interest, and the amount of both principal and interest, evidenced thereby, according to the true tenor and effect of said note,

said respondents Peter Radic and John Kremenec, the makers of said note, duly executed and delivered to the Kazulin Cole Shipbuilding Corporation, as mortgagee, a preferred ship's mortgage, dated August 18, 1949.

IV.

That by the terms and provisions of said preferred ship's mortgage, the said Peter Radic and John Kremenec admitted that they were justly indebted to the said mortgagee, Kazulin Cole Shipbuilding Corporation, in the sum of \$10,000.00 and granted, bargained, sold and mortgaged to the Kazulin Cole Shipbuilding Corporation the whole of said oil screw Flying Cloud, together with all of the masts, boats, engines, anchors, cables, chains, rigging, tackle, furniture and all other necessities thereunto appertaining and belonging, provided, that if the said Peter Radic and John [7] Kremenec should pay, or cause to be paid to the mortgagee, Kazulin Cole Shipbuilding Corporation, said principal sum of \$10,000.00, with interest thereon at the rate of 6% per annum in installments, and if the said mortgagors should perform all and singular the covenants and promises in said note and in the said mortgage, then the said mortgage and the rights therein granted should cease and be void; otherwise to remain in full force and effect; that the date of maturity of said note and mortgage, upon which date all unpaid sums of interest and principal became due and payable, was November 30, 1949.

V.

That at the time said preferred mortgage was executed, the said oil screw Flying Cloud was and still is duly documented under the laws of the United States of America, having its home port at Tacoma, Washington.

VI.

That the said preferred mortgage was duly filed for record in the Office of the Collector of Customs of the Port of Tacoma, State of Washington, the home port of the said vessel, and was duly recorded in said Office of the Collector of Customs in Book P-2, Instrument No. 41, at 4:20 p.m., on August 19, 1948, which said record shows the name of the vessel, the names of the parties to the mortgage, the time and date of the reception of the mortgage, the interests in the vessel mortgaged, and the amount and date of maturity of the mortgage, in accordance with Section 30, Subsection "C" of the Merchant Marine Act of the United States of June 5, 1920.

VII.

That said preferred mortgage was endorsed upon the document of the oil screw Flying Cloud in accordance with the provisions of said Section 30 of the Merchant Marine Act of June 5, 1920, and was recorded as provided by said Section 30, Subsection [8] "C" of said Merchant Marine Act; that an affidavit was filed with the record of said mortgage to the effect that the mortgage was made in good faith and without any design to hinder, delay or defraud any existing or future creditors of the

mortgagors, or any lienor of the mortgaged vessel. The said mortgage did not stipulate that the mortgagee waived the preferred status thereof. That all of the acts and matters required to be done by the said Merchant Marine Act of June 5, 1920, in order to give to the said mortgage the status of a preferred mortgage, were done, either by Kazulin Cole Shipbuilding Corporation or by the Collector of Customs of the Port of Tacoma, Washington.

VIII.

That libelant is informed and believes, and therefore alleges, that the Collector of Customs of the Port of Tacoma, Washington, upon the recording of said preferred mortgage, delivered two (2) certified copies thereof to the mortgagors, the said Peter Radic and John Kremenic, and that the respondents Peter Radic and John Kremenic placed and retained one copy of said mortgage on board the oil screw Flying Cloud and libelant is further informed and believes, and therefore alleges, that the Master thereof caused the said copy and the documents of the said vessel to be exhibitd to any person having business with the vessel, which might give rise to a maritime lien upon the vessel, and libelant is also informed and believes, and therefore alleges, that at all times since then the Master of said vessel, upon the request of any such person, has exhibited to him the documents of the vessel and the copy of the said preferred mortgage placed on board thereof.

IX.

That the said preferred mortgage stated the interests of the mortgagors in the oil screw Flying Cloud, and the interests conveyed or mortgaged, and before the same was recorded said mortgage had been acknowledged by said Peter Radic and [9] John Kremenec before a Notary Public authorized by the Laws of the State of Washington to take acknowledgments of deeds within the said State.

X.

That on October 19, 1949, the said Kazulin Cole Shipbuilding Corporation by an instrument in writing, assigned said note and mortgage to the libelant; that said assignment was recorded with the Collector of Customs at Tacoma, Washington, on March 23, 1950, at 9:00 a.m., in Book P-2, Instrument No. 137; that on said date of October 19, 1949, and ever since then, the libelant has been and now is the holder of the aforesaid note; that since November 30, 1949, the respondents have failed and refused to pay to the libelant the principal and interest as provided therein; that there is now due, owing and payable from the respondents to the libelant the sum of \$10,-000.00 with interest thereon at the rate of 6% per annum from November 30, 1949; that libelant has demanded payment of said sum, but the respondents Peter Radic and John Kremenec have failed and refused to pay the same, or any part thereof.

XI.

That the said preferred mortgage provided in part, that if default be made in any of the install-

ments as provided in said promissory note, that the whole sum of principal and interest, without notice, shall become due at the option of the mortgagee, and suit may be immediately brought to foreclose said mortgage; that said preferred mortgage and note also provided, that if suit be brought to enforce payment of the sums due thereunder, the makers of said note and the mortgagors under said preferred mortgage agreed to pay a reasonable attorney's fee to the holder of the note, and that the said preferred mortgage was also given to secure the payment of any such sum. [10]

XII.

That the said preferred mortgage provided inter alia, that if insurance be not maintained by the owners thereof, that the mortgagee should obtain said insurance at the expense of the mortgagors and that the sum so expended by the mortgagee should be repaid by the mortgagors, and that the said mortgage should be security therefor; that the mortgagors did permit the insurance to lapse on said vessel, and the mortgagee has procured insurance therefor; that the cost of said insurance has not as yet been determined and therefore mortgagee and libelant herein ask leave to prove, and if required by the Court, to amend this Libel, to show the sums expended for such insurance, no part of which has been repaid by the mortgagors.

Wherefore, libelant prays:

(1) That process in due form of law, according to the course and practice of this Court in causes

of admiralty and maritime jurisdiction, may issue against the oil screw Flying Cloud, her engines, tackle, apparel, boats, furniture and equipment, and that all persons claiming any interest in the said vessel may be cited to appear and answer the matters aforesaid, and that the oil screw Flying Cloud, her engines, tackle, apparel, boats, furniture and equipment, may be condemned and sold to pay the demands and claims aforesaid, with interest and costs, and to pay a reasonable attorney's fee to libelant, and any and all other amounts including insurance premiums required to be paid by the mortgagors to the mortgagee and libelant under said preferred mortgage with interest and costs;

(2) That process in due form of law, according to the course and practice of this Court in causes of admiralty and maritime jurisdiction, may issue against the respondents Peter Radic and John Kremenie, citing each of them to [11] appear and answer the allegations aforesaid; and that the Court be pleased to give libelant a decree against the said respondents, and each of them, in the sum of \$30,267.40 with interest, together with a reasonable allowance for attorney's fees to libelant, repayment of insurance premiums advanced, with interest and costs;

(3) That the aforesaid preferred mortgages be declared to be a valid and subsisting first and second liens upon the said oil screw Flying Cloud, her engines, tackle, apparel, boats, furniture and equipment, prior and superior to the interests, liens or

claims of any and all persons, firms or corporations whatsoever, except such persons, firms or corporations as may hold preferred maritime liens on the said vessel;

(4) That in default of the payment of the sums found to be due and payable to the libelant under the said preferred mortgage, within a time to be limited by a decree of this Honorable Court, together with interest, and costs, it may be decreed that any and all persons, firms and corporations claiming any interest in the said vessel Flying Cloud, her engines, tackle, apparel, boats, furniture and equipment, are forever barred and foreclosed of and from all right or equity of redemption, or claim of, in or to the said Oil Screw Flying Cloud, her engines, tackle, apparel, boats, furniture and equipment, and every part thereof;

(5) That this Honorable Court shall direct the manner in which actual notice of the commencement of this suit shall be given by the libelant to the Master of the vessel Flying Cloud, and to any person, firm or corporation who has recorded a notice of claim of an undischarged lien upon the vessel, as provided in Sections 925 and 951 of Title 46, U. S. Code.

CHARLES H. KENT, and

HERBERT R. LANDE,

By /s/ CHARLES H. KENT,

Proctors for Libelant. [12]

State of California,
County of Los Angeles—ss.

Charles H. Kent, being first duly sworn, on oath, deposes and says:

That he is one of the proctors for the libelant in the above-entitled cause who is a party herein; that he has read the foregoing Libel—Foreclosure of Preferred Ship's Mortgage and that he believes it to be true; that said libelant is a national banking corporation with its principal place of business at Tacoma, Washington, and is absent from and is a non-resident of the State of California and County of Los Angeles, in which said suit is brought, and that affiant makes this affidavit and verification for the reason that libelant is absent from and is a non-resident of said County of Los Angeles and State of California in which said action is brought.

Dated September 13, 1950.

/s/ CHARLES H. KENT,
Of Counsel for Libelant.

Subscribed and sworn to before me this 13th day of September, 1950.

[Seal] /s/ RUTH STUART,
Notary Public, in and for the County of Los Angeles, State of California.

My Commission expires October 4, 1952.

[Endorsed]: Filed September 14, 1950. [13]

In the District Court of the United States, Southern
District of California, Central Division

In Admiralty No. 12271-WM

PUGET SOUND NATIONAL BANK OF TA-
COMA, a National Banking Corporation,
Libelant,

vs.

AMERICAN OIL SCREW FLYING CLOUD,
HER ENGINES, TACKLE, APPARATUS,
BOATS, FURNITURE AND EQUIPMENT;
and PETER RADIC and JOHN KREMENIC,
Respondents.

CROFTON DIESEL ENGINE COMPANY, INC.,
a California Corporation; and AL LARSON
BOAT SHOP, a California Corporation,
Interveners,

vs.

AMERICAN OIL SCREW FLYING CLOUD,
HER ENGINES, TACKLE, APPARATUS,
BOATS, FURNITURE AND EQUIPMENT;
and PETER RADIC and JOHN KREMENIC,
Respondents.

**LIBEL IN INTERVENTION TO FORECLOSE
PREFERRED MORTGAGE, AND LIBEL
IN INTERVENTION FOR SUPPLIES AND
MATERIALS [14]**

To the Honorable, the Judges of the United States
District Court, for the Southern District of
California, Central Division:

The Libel in Intervention of Crofton Diesel Engine Company, Inc., a California corporation, to foreclose preferred mortgage, and the Libel in Intervention of Al Larson Boat Shop, a California corporation, for supplies and materials, against the American Oil Screw Flying Cloud, her engines, tackle, apparatus, boats, furniture and equipment, and Peter Radic and John Kremenec, in a cause, civil and maritime, alleges as follows:

For a First Cause of Action Against the American Oil Screw Flying Cloud, Her Engines, Tackle, Apparatus, Boats, Furniture and Equipment, and Peter Radic and John Kremenec, and Against All Persons Intervening for Their Interests Herein, Intervener Crofton Diesel Engine Company, Inc., Alleges as Follows:

I.

That the Intervener, Crofton Diesel Engine Company, Inc., is a California corporation, authorized to do and is doing business in the County of Los Angeles and County of San Diego, State of California, and within the jurisdiction of this Honorable Court.

II.

That the Respondents, Peter Radic and John Kremenec, are residents within the jurisdiction of this Honorable Court, and that the American Oil Screw Flying Cloud is now, and during the pendency of the action herein, will be within the Southern District of California, and within the jurisdiction of this Honorable Court.

III.

That on or about the 9th day of May, 1950, the said American Oil Screw Flying Cloud, Official No. 255,923, was owned by Peter Radic and John Kremenec. [15]

IV.

That on or about the 9th day of May, 1950, said Peter Radic and John Kremenec executed the following promissory note:

“Mortgage Note

“\$6,500.00

“San Pedro, California

“May 9, 1950

“On or before May 1, 1952, for value received, the undersigned, jointly and severally, promise to pay to Crofton Diesel Engine Company, a corporation, or order, at Foot of G Street, Fishermen’s Wharf, San Diego, California, the principal sum of Six Thousand Five Hundred and No/100 Dollars (\$6,500.00) with interest thereon at the rate of six per cent (6%) per annum. Principal payable in lawful money of the United States.

“If action be instituted on this note, the undersigned promise to pay such sum as the Court may fix as attorneys’ fees.

“Extension of the time of payment of all or any part of the amount owing hereon at any time or times shall not affect the liability of any party hereto or surety or guarantor hereof.

“This note is secured by a Third Preferred

Ship's Mortgage on the Oil Screw Vessel Flying Cloud, Official No. 255,923.

“/s/ PETER RADIC.

“/s/ JOHN KREMENIC.”

That on or about the said date said note was delivered to Crofton Diesel Engine Company, Inc., the payee thereof.

V.

That in order to secure the payment of the principal of said note according to the true tenor and effect of said note, the mentioned Peter Radic and John Kremenec, jointly and severally, duly executed and delivered to the Intervener, Crofton Diesel Engine [16] Company, Inc., as Mortgagee, a Third Preferred Mortgage dated the 9th day of May, 1950, and recorded in the Office of Collector of Customs in the District of Tacoma, at the Port of Tacoma, Washington, on the 29th day of May, 1950, at 4:55 o'clock p.m., and recorded in Liber P/2 of mortgages, folio 159, etc. A full, true and correct copy of said preferred mortgage and note is attached hereto, marked Exhibit “A,” and by this reference made a part hereof, and Intervener, Crofton Diesel Engine Company, Inc., begs leave to refer to the said preferred mortgage for all of the terms, provisions and conditions therein contained as though the same were set forth herein at length.

VI.

That by the terms and provisions of said preferred mortgage, the mentioned Peter Radic and

John Kremenec, jointly and severally, admit that they were justly indebted to said mortgagee in the sum of Six Thousand Five Hundred and No/100 Dollars (\$6,500.00), and granted, bargained, sold, conveyed, transferred, assigned, remised, released, mortgaged, set over, and confirmed unto the mortgagee, its successors and assigns, the whole of said vessel, together with her engines, boilers, machinery, masts, bowsprits, boats, anchors, cables, riggings, tackle, apparel, furniture, nets and fishing gear, and all other appurtenances thereunto belonging and appertaining, and any and all additions, improvements and replacements thereafter made in or to the said vessel or any part or appurtenance or equipment thereof, provided, that if the mentioned Peter Radic and John Kremenec, their heirs, administrators and assigns, should pay or cause to be paid to the said mortgagee, its successors and assigns, the principal sum of Six Thousand Five Hundred and No/100 Dollars (\$6,500.00), with interest thereon in accordance with the terms and conditions of said promissory note, and if the mentioned Peter Radic and John Kremenec should keep, perform and observe all and singular the covenants and promises in [17] the said note and in the said mortgage, then the said mortgage and the estate and rights thereby granted should cease, determine and be void, otherwise to remain in full force and effect.

VII.

That at the time the said preferred mortgage was executed the said Oil Screw Vessel Flying Cloud

was and she still is duly enrolled and/or documented under the laws of the United States of America, having her home port at the Port of Tacoma, Washington. That the Official Number of said Oil Screw Vessel Flying Cloud is 255,923, and that said vessel was and is of about 65 gross tons, and 29 net tons register.

VIII.

That said preferred mortgage was duly filed for record in the Office of the Collector of Customs of the Port of Tacoma, Washington, the home port of the said Vessel and the port nearest the residence of the owners of said vessel, and was duly recorded in said Office of the Collector of Customs in Liber P/2 of mortgages, folio 159, at 4:55 o'clock p.m., on the 29th day of May, 1950, which said record shows the name of the vessel, the names of the parties to the mortgage and the time and date of the reception of the mortgage for record, the interest in the vessel mortgaged and the amount and date of the maturity of the mortgage, as provided by the laws of the United States.

IX.

That said preferred mortgage was endorsed upon the document of said Vessel Flying Cloud in accordance with the provisions of the laws of the United States. That an affidavit was filed with the record of said mortgage to the effect that said mortgage was made in good faith and without any design to hinder, delay or defraud any existing or future creditor

of the mortgagors or any lienor of the mortgaged vessel. That the said preferred mortgage did not stipulate that the mortgagee waived the preferred status [18] thereof. That all of the acts and things required to be done by the laws of the United States, and specifically by the Act of June 5, 1920, 41 Stat. 1000, in order to give to the said mortgage the status of a preferred mortgage were duly done or caused to be done either by the mortgagee named in said mortgage or by the Collector of Customs of the Port of Tacoma, Washington.

X.

That the Collector of Customs of the Port of Tacoma, Washington, upon the recording of said preferred mortgage, delivered two certified copies thereof to the mortgagors, the said Peter Radic and John Kremenec, who placed and used due diligence to retain one copy on board said Vessel Flying Cloud and caused the said copy and the documents of the said vessel to be exhibited by the master thereof to any person having business with said Vessel which might give rise to a maritime lien upon such vessel, or to the sale, conveyance or mortgage thereof; and at all times since then the master of said vessel, upon the request of any such person, has exhibited to him the documents of said vessel and the copy of said preferred mortgage placed on board thereof.

XI.

That said preferred mortgage stated the interest of the mortgagors in said Vessel Flying Cloud and

the interest conveyed or mortgaged, and before the same was recorded said mortgage had been acknowledged in the County of Los Angeles, State of California, before a Notary Public authorized by the laws of the State of California to take acknowledgements of deeds within said County of Los Angeles, State of California.

XII.

That Article XIV of said preferred mortgage provides in part as follows:

“In the event of Mortgagor.. default of prompt and [19] punctual payment when due in the payment of any interest or principal sum on said note.., and any such default shall continue for fifteen (15) days, * * *

“Then in every such case the entire principal sum and/or said note.. with interest shall be immediately due and payable at Mortgagee.. option with prior notice. * * *

“Mortgagee.. shall have the right to bid or purchase said vessel.”

XIII.

That no payment has been made in the payment of interest and principal due to the Intervener, Crofton Diesel Engine Company, Inc., on the mentioned note described in Paragraph IV hereof, and that as of the date hereof there is due, owing and unpaid on account of the principal under the terms of said note and/or mortgage the total sum of Six Thousand Five Hundred and No/100 Dollars

(\$6,500.00), together with interest from the 9th day of May, 1950, at the rate of six per cent (6%) per annum, the Intervener, Crofton Diesel Engine Company, Inc., having elected, pursuant to the option granted by the terms of said mortgage, to treat the entire sum of principal and interest now payable under the terms of said note as due and payable by reason of default in the payment of the note after due demand on the makers of said note. That although demand has been duly made for the payment of said principal and interest upon said Peter Radic and John Kremenec, the makers of said note and mortgage, no payment of all or any part of the amount due thereon, as hereinbefore alleged, has been made, and that there is now due, owing and unpaid on the said note as of the date hereof to the Intervener, Crofton Diesel Engine Company, Inc., the sum of Six Thousand Five Hundred and No/100 Dollars (\$6,500.00), together with interest from the 9th day of May, 1950, at the rate of six per cent (6%) per annum.

XIV.

That Article XVI of said preferred mortgage provides in [20] part as follows:

“Proceeds from any sale shall be applied as follows:

“First: To pay charges of sale, including expenses of retaking.

“Second. Attorney’s fees and costs.

“Third. Payment of unpaid balance of prin-

cipal and interest on said note . . , and advances made by Mortgagee . . .

“Fourth. Any surplus to Mortgagor . . . If insufficient funds are realized to satisfy the sums set out above, Mortagor . . shall forthwith pay Mortgagee . . the amount of such deficiency.”

XV.

That pursuant to the provisions of Article XVI thereof, Intervener, Crofton Diesel Engine Company, Inc., has employed the services of attorneys and proctors, to wit: Ekdale & Shallenberger, and has incurred an obligation for attorneys' fees in a reasonable amount, said amount to be found by the Court and ordered paid accordingly.

For a Second Cause of Action Against the American Oil Screw Flying Cloud, Her Engines, Tackle, Apparatus, Boats, Furniture and Equipment, and Peter Radic and John Kremenic, and Against All Persons Intervening for Their Interests Herein, Intervener, Al Larson Boat Works, Alleges as Follows:

I.

That the Intervener, Al Larson Boat Works, is a California corporation, authorized to do and is doing business in the County of Los Angeles, State of California, and within the jurisdiction of this Honorable Court.

II.

That the Respondents, Peter Radic and John Kremenic, are [21] residents within the jurisdic-

tion of this Honorable Court, and that the American Oil Screw Flying Cloud is now, and during the pendency of the action herein, will be within the Southern District of California, and within the jurisdiction of this Honorable Court.

III.

That on or about the 20th day of October, 1949, the said American Oil Screw Flying Cloud, Official No. 255,923, was owned by Peter Radic and John Kremenec.

IV.

That prior to the time of the taking of the note and mortgage set forth in the First Cause of Action of the Libel in Intervention of Crofton Diesel Engine Company, Inc., to wit, on or about the 20th day of October, 1949, at the special instance and request of the Master, Owners and agents of the said American Oil Screw Flying Cloud, the Intervener, Al Larson Boat Shop, performed work and labor on and furnished goods, wares and materials to the said Vessel Flying Cloud, in the total sum of One Thousand Seventy-Seven and $73/100$ Dollars (\$1,077.73); that though demand has been made upon the respondent Oil Screw, her Master, Owners and agents, for the said sum of One Thousand Seventy-Seven and $73/100$ Dollars (\$1,077.73), no part thereof has been paid, and there remains due, owing and unpaid the sum of One Thousand Seventy-Seven and $73/100$ Dollars (\$1,077.73), together with interest thereon from the 20th day of October, 1949, at the rate of seven per cent (7%) per annum.

V.

That after the time of the taking of the note and mortgage set forth in the First Cause of Action of the Libel in Intervention of Crofton Diesel Engine Company, Inc., to wit, on or about the 18th day of July, 1950, at the special instance and request of the Master, Owners and agents of the said American Oil Screw Flying Cloud, the Intervener, Al Larson Boat Shop, performed work and [22] labor on and furnished goods, wares and materials to the said Vessel Flying Cloud, in the total sum of Two Thousand One Hundred Twenty and 03/100 Dollars (\$2,120.03); that though demand has been made upon the respondent Oil Screw, her Master, Owners and agents, for the said sum of Two Thousand One Hundred Twenty and 03/100 Dollars (\$2,120.03), no part thereof has been paid, and there remains due, owing and unpaid the sum of Two Thousand One Hundred Twenty and 03/100 Dollars (\$2,120.03), together with interest thereon from the 18th day of July, 1950, at the rate of seven per cent (7%) per annum.

VI.

That all and singular, the premises of the within Libel in Intervention, and each of the separate causes of action set forth herein are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, Interveners pray:

1. That process in due form of law, according

to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction issue against the said Oil Screw Vessel Flying Cloud, Official No. 255,923, her engines, boilers, machinery, tackle, apparel, boats, equipment, and furniture in rem, and Peter Radic and John Kremenic, in personam, and that all persons claiming any interest in the said vessel may be cited to appear and answer to the matter aforesaid, and that the said vessel, her engines, boilers, machinery, tackle, apparel, boats, equipment, and furniture, nets and fishing gear, be condemned and sold to pay the debts and claims of aforesaid, with interest and costs, and to pay any and all other amounts required to be paid by the mortgagors to the Intervener, Crofton Diesel Engine Company, Inc., as Mortgagee under the said preferred mortgage in accordance with the terms and [23] provisions of said mortgage, together with interest, costs and proctors' fees, and to pay any and all other amounts required to be paid by the respondents to the Intervener, Al Larson Boat Shop, for the labor and materials furnished, together with interest, costs and proctors' fees; that if the proceeds of such sale shall be insufficient to pay the same, a deficiency judgment be entered against the respondents, Peter Radic and John Kremenic, and that Interveners may have such other and further relief as in law and justice they may be entitled to receive.

2. That the said preferred mortgage dated the 9th day of May, 1950, be declared to be a valid and subsisting lien upon said Vessel Flying Cloud, her

engines, boilers, machinery, tackle, apparel, boats, equipment and furniture, nets and fishing gear, prior and superior to the interests, liens or claims of any and all persons, firms or corporations whatsoever.

3. That in default of the payment of the sum found to be due and payable to your Intervener, Crofton Diesel Engine Company, Inc., under the said mortgage within the time to be limited by decree of this Honorable Court, together with interest at seven per cent (7%) per annum on the unpaid principal of the note hereinabove described from the date of filing, together with a sum sufficient to pay the costs of this suit and such fees of counsel for Interveners as the Court may find reasonable, it being decreed that any and all persons, firms or corporations claiming any interest in the said Vessel Flying Cloud are forever barred and foreclosed of and from all right or equity or redemption or claim in or to the said mortgaged vessel Flying Cloud, and every part thereof.

4. That your Interveners be permitted to use and apply the amounts to which your Interveners are adjudged to be entitled by the decree herein, upon and as a part of the amount which they may elect to bid for said vessel at any sale thereof decreed by this Court. [24]

5. That the sum of One Thousand Seventy-Seven and 73/100 Dollars (\$1,077.73), together with interest thereon from the 20th day of October, 1949, at the rate of seven per cent (7%) per annum, and

costs thereon, be declared to be a valid and subsisting lien prior to the mortgage and note set forth in this Libel in Intervention.

6. That the Court fix and determine the priority of payments, and the order of payments, as between the Libelants and the Interveners herein, and will be pleased in that behalf to declare due and owing to the Intervener, Al Larson Boat Shop, the sum of One Thousand Seventy-Seven and 73/100 Dollars (\$1,077.73), and declare due and owing to the Intervener, Crofton Diesel Engine Company, Inc., the sum of Six Thousand Five Hundred and No/100 Dollars (\$6,500.00), together with interest, costs and reasonable attorneys' fees.

7. That Intervener, Al Larson Boat Shop, be entitled to receive the remnants and surplus up to and including the sum of Two Thousand One Hundred Twenty and 03/100 Dollars (\$2,120.03), together with interest and costs.

8. That this Honorable Court direct the manner in which actual notice of the commencement of this suit shall be given by your Interveners to the mortgagors, and to the master or other ranking officer or caretaker of said Vessel Flying Cloud and to any person, firm or corporation who has recorded a notice of claim of any undischarged lien upon the vessel as provided by the laws of the United States.

EKDALE &

SHALLENBERGER,

By /s/ ARCH E. EKDALE,

Proctors for Interveners. [25]

Third
Preferred Mortgage

This Mortgage, made this 9th day of May, 1950, between Peter Radic, Route 5, Box 814, Tacoma, Washington, and John Kremenec, Route 5, Box 814, Tacoma, Washington, Mortgagors, parties of the first part, and Crofton Diesel Engine Company, Inc., a corporation, Foot of G Street, Fishermen's Wharf, San Diego, California, Mortgagee, party of the second part:

Witnesseth:

Whereas, the Mortgagors are the sole owners of the vessel Flying Cloud, Official No. 255,923;

Whereas, the Mortgagors are justly indebted to the Mortgagee in the sum of Six Thousand Five Hundred and No/100 Dollars (\$6,500.00), and to secure the payment of said thereof with interest, has executed and delivered this preferred mortgage and note to the Mortgagee;

Now, Therefore, This Mortgage Witnesseth:

That in consideration of the premises and of the sum of One Dollar (\$1.00) to them duly paid by the Mortgagee, receipt whereof is hereby acknowledged, and in order to secure the payment of the said principal sum of Six Thousand Five Hundred and No/100 Dollars (\$6,500.00), and interest thereon at the rate of six per cent (6%) per annum, and the payment of any advancements that shall hereafter be made, and of the said note and the performance of all the covenants and conditions herein, the Mort-

gagors have granted, bargained, sold, conveyed, transferred, assigned, remised, released, mortgaged, set over, and confirmed and by these presents do grant, bargain, sell, convey, transfer, assign, remise, release, mortgage, set over, and confirm unto the Mortgagee, its assigns.

(Fill in "its successors and assigns" if corporation; if an individual, "His heirs, administrators and assigns"), all of the following:

That certain vessel called Flying Cloud (Date of maturity: On or before May 1, 1952), [26] Official Number 255,923, of 29.— net tons register, and 65.— gross tons register, which said vessel is, more fully described in consolidated certificate of enrollment and license, together with all her engines, boilers, machinery, masts, bowsprits, boats, anchors, cables, rigging, tackle, apparel, furniture, nets and fishing gear, and all other appurtenances thereunto belonging and appertaining, and any and all additions, improvements, and replacements hereafter made in or to the said vessel or any part or appurtenance or equipment thereof:

To Have and to Hold all the property aforesaid unto the Mortgagee, its assigns, forever;

Provided, However, and these presents are upon the condition that if the Mortgagors, their heirs, administrators, and assigns, shall pay or cause to be paid to the Mortgagee, its assigns, the said principal sum of Six Thousand Five Hundred and No/100 Dollars (\$6,500.00), with interest thereon in accordance with the terms and conditions of said promissory note, and shall pay any and all advances

hereafter made to them by the Mortgagee, and shall keep, perform, and observe all and singular the covenants and promises in said note and in these presents expressed to be kept, performed, and observed by or on the part of the Mortgagors, then this mortgage and the estate hereby granted shall cease, determine, and be void, otherwise to remain in full force and effect.

The aforesaid note is as follows:

Exhibit "A" attached hereto and made a part hereof.

The Mortgagors hereby agree to pay the principal amount aforesaid, and the interest thereupon as stipulated and to fulfill, perform, and observe each and every one of the covenants, agreements, and conditions in this mortgage and in said note contained.

The Mortgagors, for their heirs, administrators, and assigns hereby covenant and agree with the Mortgagee as follows:

Article I.

[Struck out]

Article II.

That the Mortgagors lawfully own and are lawfully possessed of the mortgaged property, and the Mortgagors covenant and promise that they will warrant and defend the title and possession thereto and every part thereof for the benefit of the Mortgagee against the claims and demands of all persons whomsoever; and further warrants that there are

no liens, mortgage or mortgages on said vessel, except First Preferred Mortgage in favor of The Puget Sound National Bank of Tacoma, and Second Preferred Mortgage in favor of Kazulin Cole Shipbuilding Corporation of Tacoma.

Article III.

That the Mortgagors, at their own cost and expense as long as the said principal sum or the said note hereunder and hereby secured or any portion thereof is outstanding, shall keep the vessel insured in an amount in Dollars lawful money of the United States which shall be at least equal to its full commercial value but not in any case for less than One Hundred Per Cent (100%) of the amount remaining unpaid on said principal sum and on said note.

(a) This said insurance shall be placed with responsible Underwriters in good standing and satisfactory to the Mortgagee and in such form or policies and for such form or policies and for such risks as Mortgagee approves.

(b) All said policies and/or binders and/or cover notes and/or riders shall be delivered to the Mortgagee.

(c) All insurance shall be taken out in the name of and payable as the interest of the parties hereto may appear.

(d) All losses shall be payable to the Mortgagee for distribution by it within thirty (30) days after receipt of same, first to the Mortgagee and then to the Mortgagors as their interests may appear, save that in the case of a total loss the Mortgagee may

consent that the Underwriters pay direct to the Mortgagors the [27] amount by which the total loss insurance exceeds the total amount then due to the Mortgagee under this Mortgage or note. In the event of partial loss, if the Mortgagors are not in default under this Mortgage, the Mortgagee shall consent that the Underwriters pay direct for repairs, salvage or other charges and/or reimburse the Mortgagors therefore; but if the Mortgagors are in default under this Mortgage, the Mortgagee shall be entitled to receive the proceeds of any such insurance and shall apply such proceeds in the manner provided in Article XVIII hereof.

(e) Said policy or policies shall not be cancelled, amended or modified without Mortgagee's consent.

(f) In the event Mortgagors fail to obtain said insurance, then the Mortgagee, at its sole option, may do so and charge same to the account of the Mortgagors.

Article IV.

That the Mortgagors shall not do any act or voluntarily suffer or permit any act to be done whereby any insurance is or may be suspended, impaired or defeated and shall not suffer or permit the vessel to engage in any voyage or to carry any cargo not permitted under the policy or policies of insurance in effect, unless and until the Mortgagors shall first cover the vessel to the amount herein provided for by insurance, satisfactory to the Mortgagee for such voyage or the carriage of such cargo.

Article V.

That neither the Mortgagors nor the master of the vessel shall have any right, power, or authority to create, incur, or permit to be placed or imposed upon the vessel any liens whatsoever other than for crew's wages, wages of stevedores and salvage. The Mortgagors shall carry a properly certified copy of this mortgage with the ship's papers and shall exhibit the same to any person having business with the said vessel which might give rise to any lien other than for crew's or stevedore's wages and salvage.

Article VI.

That the Mortgagors shall place and keep prominently in the chart room and the master's cabin framed printed notices reading as follows:

“This vessel is covered by a third preferred mortgage to Crofton Diesel Engine Company, Inc., a corporation, San Diego, California (Foot of G Street, Fishermen's Wharf), under authority of the ‘Ship Mortgage Act, 1920,’ and amendments thereto, to secure payment to Crofton Diesel Engine Company, Inc., a corporation, San Diego, California (Foot of G Street, Fishermen's Wharf). Under the terms of said mortgage neither the Mortgagors, nor the Master of the Vessel has any right, power, or authority to create, incur, or permit to be imposed upon the vessel any liens whatsoever other than for crew's wages, wages of stevedores, or salvage.”

Article VII.

That if a libel shall be filed against the vessel or

if the vessel shall be seized or taken into custody or sequestered by virtue of any legal proceedings in any court, the Mortgagors shall within ten (10) days thereafter cause the said vessel to be released and discharged, but this article shall not be construed as a waiver of Articles IV and V.

Article VIII.

That at all times the Mortgagors shall maintain and preserve the vessel in as good condition, working order, and repair, as at the date of the execution of this mortgage, ordinary wear and tear and depreciation excepted. Mortgagee shall have right of inspection at any time.

Article IX.

That the Mortgagors shall pay and discharge, when due and payable from time to time, all taxes, assessments, penalties, and governmental charges imposed upon the said vessel, her tackle, etc., subject, or to become subject, to this mortgage.

Article X.

That if the Mortgagors shall make default in the performance of any of the covenants in this mortgage on their part to be performed, the Mortgagee may, in its discretion, do any act or make any expenditure necessary to remedy such default, including, without limitation of the foregoing, entry upon the vessel to make repairs, and the Mortgagors shall promptly reimburse the Mortgagee, with interest at the rate of six per centum (6%) per annum, for any and all expenditures so made or incurred; and

until the Mortgagors so reimbursed the Mortgagee for such expenditures the amount thereof shall be added to the amount of the debt secured by this mortgage, and shall be secured by this mortgage in like manner and extent as if the amount and description thereof were written herein; but the Mortgagee though privileged so to do, shall be under no obligation to the Mortgagors to make such expenditures nor shall the making thereof relieve the Mortgagors of any default in that respect. The Mortgagors shall also reimburse the Mortgagee promptly with interest at the rate of six per centum (6%) per annum for any and all advances, expenses, and [28] attorney fees made or incurred by the Mortgagee at any time, and for any and all damages sustained by the Mortgagee from or by reason of any default of the Mortgagors.

Article XI.

That until default shall have been made in the performance by the Mortgagors of any of the terms, conditions, covenants, and promises herein contained, the Mortgagors may retain and possess the vessel and may use and operate the same.

Article XII.

That the Mortgagors shall comply with and satisfy all the provisions of the "Ship Mortgage Act, 1920," and all amendments thereto, and shall establish and maintain this mortgage as a first preferred mortgage under said Act and amendments, and the Mortgagors shall not sell, mortgage, transfer nor

change the flag of the vessel without the written consent of the Mortgagee.

Article XIII.

In case of default the Mortgagee shall be entitled to exercise the right of entry and retaking of said vessel and appurtenances and equipment without legal process, and with any and all other rights, privileges, and powers herein granted and conferred.

Article XIV

In the event of Mortgagors' default of prompt and punctual payment when due in the payment of any interest or principal sum on said note, and any such default shall continue for fifteen (15) days, or if default shall be made hereunder by the Mortgagors in the observance or performance of any other of the covenants, agreements, or conditions in this mortgage contained on their part to be observed and performed, and said default shall continue for fifteen (15) days; or if the Mortgagors are adjudged bankrupt, or if a receiver be appointed, or if the Mortgagors shall make a general assignment for the benefit of creditors, or if the said vessel shall be libeled or levied upon, taken into custody, or sequestered by virtue of any legal proceedings and such legal proceedings are not vacated or set aside and the said property released within fifteen (15) days or if the Mortgagor shall remove or attempt to remove the said property subject or to become subject to this mortgage beyond the limits of the United States, except on voyages with the intention of returning the said property

to the United States, then in every such case the entire principal sum and/or said note with interest shall be immediately due and payable at Mortgagee option without prior notice. Nothing in this article shall be deemed a waiver of the provisions of Articles IV and V. If such sums are not paid forthwith, Mortgagee may take possession of said vessel, her tackle, equipment, etc., without process of law, and Mortgagors may forthwith surrender possession to Mortgagee, who may sell the same at public or private sale after ten (10) days' notice to Mortgagors by mail. Mortgagee shall have the right to bid or purchase said vessel.

Article XV.

In the case of an event of default or maturity of the indebtedness or note, then the Mortgagee may retake with or without legal process possession of the vessel and other property herein mortgaged wherever the same may be found and/or sell and/or dispose of said mortgaged property at public or private sale after notice of said sale of at least five (5) days but not more than ten (10) days to the mortgagors by mail and the said sale may be held at such place or places and such time or times as the Mortgagee may by such notice have therein specified and said sale may be conducted without bringing said vessel or mortgaged property to the said place of sale and in such manner as the Mortgagee may deem to be to its best advantage. Mortgagee shall have the right to bid for and purchase said vessel or mortgaged property at any sale.

In the event of any default, the Mortgagee at its sole option may foreclose or enforce this Mortgage lien by suit in rem in admiralty and the Mortgagee shall be entitled to the appointment of a receiver or receivers of the said vessel and mortgaged property and of the tolls, earnings, revenues, rents, issues, profits and income thereof.

Article XVI.

Proceeds from any sale shall be applied as follows:

First. To pay charges of sale, including expenses of retaking.

Second. Attorney's fees and costs.

Third. Payment of unpaid balance of principal and interest on said note, and advances made by Mortgagee.

Fourth. Any surplus to Mortgagors. If insufficient funds are realized to satisfy the sums set out above, Mortgagors shall forthwith pay Mortgagee the amount of such deficiency.

Article XVII.

That in case the Mortgagee shall have proceeded to enforce any right under this indenture, by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then the Mortgagor and the Mortgagee shall be restored to their former positions except that the cost of such proceedings and attorney's fees shall be charged to the account of the Mortgagors and bear interest.

Article XVIII.

That no delay or omission of the Mortgagee to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein; and every power and remedy given herein may be exercised from time to time and as often as may be deemed expedient. [29]

Article XIX.

Nothing contained in this mortgage shall be construed as a waiver of the preferred status of this mortgage by the Mortgagee.

Article XX.

In addition to the payment of the promissory note herein set forth, this mortgage shall secure the payment of all other sums with interest thereon which may hereafter be borrowed or received by the Mortgagor from Mortgagee or which may be paid by the Mortgagee for the account of Mortgagors.

Article XXI.

That in case the Mortgagee shall have proceeded to enforce any right under this indenture by foreclosure, possession, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Mortgagee, then and in every such case the Mortgagors and the Mortgagee shall be restored to their former positions and rights hereunder with respect to the property subject or to

become subject to this Mortgage and all rights, remedies and powers of the Mortgagee shall continue as if no such proceedings had been taken except that the cost of such proceedings and Attorney's fees shall be charged to the account of the Mortgagors and bear interest as herein provided. That no delay or omission of the Mortgagee to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein; and every power and remedy given by this Mortgage to the Mortgagee shall be concurrent and cumulative and may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

The remedies in favor of Mortgagee provided for herein shall not be construed to preclude Mortgagee in the event of default hereunder from enforcing any other appropriate remedies against Mortgagors or the vessel and mortgaged property, or from proceeding by suit or suits of law, admiralty or in equity as Mortgagee may consider advisable to enforce the payment or performance of any obligation secured hereby.

Article XXII.

This Mortgage may be simultaneously executed in any number of counterparts and all such counterparts executed and delivered each as an original shall constitute but one and the same instrument.

Article XXIII.

That in the event that this Mortgage or said

note or any provisions thereof be held invalid, in whole or in part under any present or future law of the United States or any decisions of any authoritative Court thereof, the Mortgagor shall execute such other or further instruments as in the opinion of Counsel for the Mortgagee will carry out the true intent and spirit of this Mortgage. From time to time the Mortgagors shall execute such further assurances as in the opinion of Counsel for the Mortgagee may be required more effectually to subject the property herein mortgaged or intended to be mortgaged to the payment of said principal sum and note. Invalidity of any provision hereof shall not impair or defeat the provisions hereof which are valid.

Article XXIV.

All notices to Mortgagor may be made by mail addressed to John Kremenic (G.P.S. Notary), 1108 West 24th Street, San Pedro, California.

All the covenants, stipulations, and agreements in this mortgage contained are and shall bind and inure to the benefit of the Mortgagors, their heirs, administrators, and assigns, and Mortgagee, its assigns.

In Witness Whereof, the Mortgagors have executed this mortgage the day and year first above written.

/s/ PETER RADIC,

/s/ JOHN KREMENIC.

(Acknowledgment for Corporation)

[Struck Out]

(Acknowledgment for Individual)

State of California,
County of Los Angeles—ss.

On this 9th day of May, 1950, before me, the undersigned a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Peter Radic and John Kremenec known to me to be the persons whose names are subscribed to the within mortgage, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

GORDON P.

SHALLENBERGER,

Notary Public in and for the County of Los Angeles,
State of California.

Affidavit of Mortgagor

State of California,
County of Los Angeles—ss.

Peter Radic and John Kremenec being duly sworn, depose and say: That they are the Owners and Mortgagors of the Vessel "Flying Cloud" official number 255,923, and that the attached mortgage is made in good faith and without any design to hinder, delay, or defraud any existing or future

creditor of the Mortgagor or any lienor of the above-mentioned vessel.

/s/ PETER RADIC,

/s/ JOHN KREMENIC.

Subscribed and sworn to before me this 9th day of May, 1950.

GORDON P.

SHALLENBERGER,

Notary Public in and for the County of Los Angeles, States of California. [31]

United States of America,
Southern District of California,
Central Division—ss.

Arch E. Ekdale being by me first duly sworn, deposes and says: that he is one of the attorneys for the Interveners in the above-entitled action; that he has read the foregoing Libel in Intervention to Foreclose Preferred Mortgage, and Libel in Intervention for Supplies and Materials and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

That the Interveners are unable to make the verification because authorized officers of said corporations are presently absent from said County of Los Angeles, and for that reason affiant makes this verification on behalf of said Interveners.

/s/ ARCH E. EKDALE.

Subscribed and sworn to before me this 28th day of September, 1950.

[Seal] /s/ GORDON P.

SHALLENBERGER,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed September 29, 1950. [32]

[Title of District Court and Cause.]

ANSWER OF INTERVENERS, CROFTON DIESEL ENGINE COMPANY, INC., AND AL LARSON BOAT SHOP TO LIBEL—FORECLOSURE OF PREFERRED SHIP'S MORTGAGE, WITH ATTACHED INTERROGATORIES

To the Honorable, the Judges of the United States District Court for the Southern District of California, Central Division:

The Answer of Crofton Diesel Engine Company, Inc., a [33] California Corporation, and Al Larson Boat Shop, a California Corporation, Interveners, to the Libel of Puget Sound National Bank of Tacoma, a national banking corporation, against American Oil Screw "Flying Cloud," her engines, tackle, apparatus, boats, furniture and equipment, and Peter Radic and John Kremenec, in a cause of action, for foreclosure of preferred ship's mortgage, civil and maritime, admit, deny and allege as follows:

I.

Answering Articles III, IV, V, VI, VII, VIII,

IX, X, XI, XII and XIII of Libelant's First Cause of Action, these answering Interveners have no information or belief on the matters contained therein sufficient to enable them to answer the allegations of said Articles, and placing their denial on the ground of lack of information and belief deny generally, specifically and positively each and every allegation contained therein and the whole thereof.

Interveners, Crofton Diesel Engine Company, Inc., a California Corporation, and Al Larson Boat Shop, a California Corporation, In Answer to Libelant's Second Cause of Action, Admit, Deny and Allege as Follows:

I.

Answering Articles II, III, IV, V, VI, VII, VIII, IX, X, XI and XII of Libelant's Second Cause of Action, these answering Interveners have no information or belief on the matters contained therein sufficient to enable them to answer the allegations of said Articles, and placing their denial on the ground of lack of information and belief deny generally, specifically and positively each and every allegation contained therein and the whole thereof.

Interveners, Crofton Diesel Engine Company, Inc., a [34] California Corporation, and Al Larson Boat Shop, a California Corporation, for a Further First, Separate and Affirmative Defense to Libelant's Action, Allege as Follows:

I.

That this Honorable Court is without jurisdiction

in the premises in that the documents referred to as preferred ship's mortgages are not such, in law or fact, and never had the status of preferred ship's mortgages.

Intervenors, Crofton Diesel Engine Company, Inc., a California Corporation, and Al Larson Boat Shop, a California Corporation, for a Further Second, Separate and Affirmative Defense to Libellant's Action, Allege as Follows:

I.

That these answering Intervenors are informed and believe, and therefore allege, that the documents referred to in the Libel as preferred ship's mortgages are not such, in fact, for failure to comply with the Ship Mortgage Act of 1920, as amended, and specifically Paragraph (a) (4) of Section 922 of Title 46, U.S.C.A., and in that behalf these answering Intervenors allege that they are informed and believe and therefore allege that both of said alleged preferred ship's mortgages specifically provide that the Mortgagor may incur liens for current operation and repairs "to be kept currently paid within thirty days of date incurred"; that said documents fail in other particulars to abide by the terms of the aforementioned Ship Mortgage Act of 1920, as amended, the particulars of which these answering Intervenors are not now advised, and that when so advised, these answering Intervenors will pray leave to amend this their said answer accordingly.

Wherefore, Interveners pray that the Libelant take nothing [35] by its cause of action alleged and that claims of Interveners, Crofton Diesel Engine Company, Inc., a California Corporation, and Al Larson Boat Shop, a California Corporation, be held prior to those of Libelant, and that Interveners be allowed to go hence with their costs of suit incurred, and for such other and further relief as to the Court may seem just and meet in the premises.

EKDALE &
SHALLENBERGER,

By /s/ ARCH E. EKDALE,
Proctors for Interveners, Crofton Diesel Engine
Company, Inc., and Al Larson Boat Shop. [36]

INTERROGATORIES ADDRESSED TO LI-
BELANT, PUGET SOUND NATIONAL
BANK OF TACOMA, TO BE ANSWERED
BY IT IN WRITING UNDER OATH

Interrogatory 1.

What was the consideration for the notes and mortgages, and to whom and when were they paid?

Interrogatory 2.

What, if any, part of the consideration or of the demand in the libel was paid for insurance premiums?

Interrogatory 3.

Is the form of the so-called preferred ship's mortgages sued upon Custom Form 1348, Treasury Department, 3.33, 3.38, C.R. 1943—April, 1943?

If so, was anything done to make it a preferred ship's mortgage in addition to typing the word "preferred" in front of the word "mortgage" at the top of said Form? Explain in detail.

Interrogatory 4.

Is it not a fact that the forms of the so-called mortgages authorize the vessel to run in debt for a reasonable sum for current operation and repairs "to be kept currently paid within thirty days of date incurred"?

Interrogatory 5.

If your answer to Interrogatory 4 is in the affirmative, state the purpose of allowing the vessel to run into debt.

Interrogatory 6.

Who will have possession of the preferred ship's mortgages and notes pending the time of trial? [37]

Interrogatory 7.

Is it a fact that the notes are guaranteed by others than parties to this suit?

If so, state to whom, in what amounts, and why the guarantees were made.

Interrogatory 8.

If guarantees exist on the notes, is other collateral pledged, and if so, of what does it consist?

Interrogatory 9.

Does there exist or was there pledged any col-

lateral or security other than the vessel "Flying Cloud" for the notes alleged to be secured by the first and second mortgages?

Interrogatory 10.

If your answer to Interrogatory 9 is in the affirmative, state what other collateral and security, when taken, and what its present status is.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed November 30, 1950. [38]

[Title of District Court and Cause.]

ANSWERS TO INTERROGATORIES AD-
DRESSED TO LIBELANT, THE PUGET
SOUND NATIONAL BANK OF TACOMA

County of Pierce,
State of Washington—ss.

C. D. Ogden, being first duly sworn, deposes and says:

That he is a Vice President of The Puget Sound National Bank, the plaintiff herein; that he is authorized to execute this affidavit for and on behalf of said bank; that his answers to the interrogatories proposed by the intervenors are as follows:

Answer 1.

The first preferred mortgage supports a note in the amount of Twenty-five Thousand and No/100 Dollars (\$25,000.00) dated August 18, 1948, payable to The Puget Sound National Bank of Tacoma. The

funds amounting to \$25,000.00 went through the hands of Peter Radic and John Kremenec to the Kazulin-Cole Shipbuilding Corporation as part of the purchase price of the vessel O/SS "Flying Cloud," covered by the relative mortgage.

The second preferred mortgage supports a note signed by Peter Radic and John Kremenec on August 18, 1948, payable to Kazulin-Cole Shipbuilding Corporation. This was given to that corporation as an additional part of the purchase price of the vessel O/S Flying Cloud. This note was then endorsed and the relative mortgage assigned to the Puget Sound National Bank of Tacoma by the Kazulin-Cole Shipbuilding Corporation, as collateral to a loan in like amount made by The Puget Sound National Bank of Tacoma, to Kazulin-Cole Shipbuilding Corporation, for which that corporation [41] received \$10,000.00 to complete paying bills incurred in the construction of the vessel O/S "Flying Cloud."

Answer 2.

The Puget Sound National Bank of Tacoma has paid a premium of \$1,601.38 to W. N. Gates, of 327 East First Street, Long Beach, California, for Port Risk Insurance on the vessel O/S "Flying Cloud." On the day the vessel was sold by the United States Marshal, these policies were delivered to Mr. Gates to be short-rated. There will be a return premium to be applied against this fund, but the amount is not yet known.

In addition, we are obligated to the Commercial Fishermen's Inter-Insurance Exchange in the amount of \$679.66, representing that portion of the

premium on insurance then in force accrued after July 19, 1950, as a result of a guaranty given by this bank to that company to stop the cancellation of insurance while the vessel was still in use.

The insurance above referred to is Protection and Indemnity Insurance and Hull Insurance on the vessel O/S "Flying Cloud."

Answer 3.

The document containing the plaintiff's preferred ship's mortgage, referred to in the complaint herein, consists of Customs Form 1348, together with certain typewritten additions. The said document became a preferred ship's mortgage on the vessel O/S "Flying Cloud" when the following things were done:

(a) When it was executed by Radic and Kremenec upon the whole of the vessel O/S "Flying Cloud," a vessel of the United States, on August 18, 1948:

(b) Its endorsement on the vessel's documents, on [42] August 19, 1948;

(c) Its recordation with the Collector of Customs at Tacoma, Washington, in accordance with Sec. 921, U.S. Code, Title 46, together with a notation as to the time and date of endorsement, on August 19, 1948, at 4:20 o'clock, p.m., in Book P2, Instrument No. 41, of the records of said Collector of Customs.

(d) An affidavit of Radic and Kremenec, dated August 18, 1948, was filed with said record of said mortgage stating that the said

mortgage "is made in good faith and without any design to hinder, delay or defraud any existing or future creditor of the mortgagors or any lienor" of the said vessel;

(e) The mortgage did not stipulate that the mortgagee waived the preferred status thereof;

(f) The mortgagee was a citizen of the United States.

Answer 4.

No—the mortgages state a condition, the happening of which will accelerate the maturity of the debt and mortgage. The condition referred to is stated in the mortgage as follows:

"if said first parties (mortgagors) shall suffer and permit said vessel to be run in debt to an amount exceeding in the aggregate the sum of a reasonable sum for strictly current operation and repairs to be kept currently paid within thirty days of date incurred . . . the party of the second part (mortgagee) is hereby authorized to take possession of said goods and chattels . . . either before or after the expiration of the time aforesaid, and sell and convey the same . . . to satisfy the debt . . . (etc.) [43]

Answer 5

The mortgagors, after execution of a preferred ship's mortgage, have the right to incur other debts and liens against the vessel, only such debts and liens are subordinate to the preferred mortgage. The above clause in the mortgage, quoted in answer to Interrogatory 4, is a limitation on such right.

Answer 6.

Herbert R. Lande.

Answer 7.

We hold a separate guaranty to the note secured by the first preferred mortgage signed by Kazulin-Cole Shipbuilding Corporation, Alva E. Cole, Mike Kazulin, Peter V. Vale, and A. M. Ursich, as individuals.

The note for which the second mortgage is assigned as collateral is endorsed by Alva E. Cole, Mike Kazulin, Peter V. Vale and A. M. Ursich, and is made by the Kazulin-Cole Shipbuilding Corporation.

Answer 8.

There is no other collateral pledged.

Answer 9.

There never has been any other collateral pledged.

Answer 10.

See answer to Interrogatory 9.

/s/ C. D. OGDEN.

Subscribed and sworn to before me this 15th day of December, 1950.

[Seal]: /s/ WINIFRED R. BRECHT,
Notary Public in and for Pierce County and the
State of Washington, residing at Tacoma.

Affidavit of service by mail attached.

Receipt of copy acknowledged.

[Endorsed]: Filed December 19, 1950. [44]

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED TO INTERVENER, CROFTON DIESEL ENGINE CO., INC., A CORPORATION

Pursuant to Rule 33 of Rules of Civil Procedure, the intervenor Crofton Diesel Engine Co., Inc., a corporation, by its officers and agents, is hereby requested to answer under oath the following interrogatories within fifteen (15) days from the date of service:

1. State whether the Crofton Diesel Engine Co., Inc., had a claim or debt against the respondent D/V "Flying Cloud."

2. If the answer to the first question is in the affirmative, state the amount of the claim, the date or dates of the transactions giving rise to it, and the details of the charges, with a statement as to the nature, character and particulars of each charge.

3. State whether or not any goods, merchandise, labor, services or machinery, furnished by Crofton Diesel Engine Co., Inc., [53] to the D/V "Flying Cloud," are claimed to have been for current operation and/or repairs to the respondent vessel; and if so, state with particularity the details and items of each, with dates and sums charged for each.

4. If the answer to the first question is in the affirmative, state whether a mortgage was given to secure the claim or debt, and if so, attach a complete copy of same to the answer.

5. State whether or not the Crofton Diesel En-

gine Co., Inc., through its officers and agents, knew of the mortgage of the libelant, dated August 18, 1948, in the principal sum of \$25,000.00, and the mortgage of Kazulin-Cole Shipbuilding Corporation, dated August 18, 1948, in the principal sum of \$10,000.00, prior to and at the time the said claim or debt of Crofton Diesel Engine Co., Inc., against the D/V "Flying Cloud" was created.

6. If the answer to Interrogatory 5 is in the negative, state whether or not the Crofton Diesel Engine Co., Inc., by and through its officers and agents, inspected the official document of the "Flying Cloud," prior to or at the time of the creation of the claim or debt of the Crofton Diesel Engine Co., Inc., against the "Flying Cloud."

7. If the answer to Interrogatory 5 is in the negative, state whether or not, prior to or at the time of creation of the claim or debt of Crofton Diesel Engine Co., Inc., against the "Flying Cloud," the Crofton Diesel Engine Co., Inc., by and through its officers and agents, searched or had searched the official records of mortgages of the Collector of Customs at Tacoma, State of Washington, to ascertain what mortgages were recorded against and upon said vessel.

Dated: January 3, 1951.

Respectfully submitted,

/s/ HERBERT R. LANDE,
Proctor for Libelant.

Affidavit of service by mail attached.

[Endorsed]: Filed January 4, 1951. [54]

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED TO INTERVENER, AL LARSON BOAT SHOP, A CORPORATION

Pursuant to Rule 33 of Rules of Civil Procedure, the intervener Al Larson Boat Shop, a corporation, by its officers and agents, is hereby requested to answer under oath the following interrogatories within fifteen (15) days from the date of service hereof:

1. State whether or not Al Larson Boat Shop, a corporation, had a claim or debt against the respondent vessel "Flying Cloud."

2. If the answer to the first question is in the affirmative, state the amount of the claim, the date or dates of the transactions giving rise to it, and the details of the charges, with a statement as to the nature, character and particulars of each charge.

3. State whether or not any goods, merchandise, labor, services or machinery, furnished by Al Larson Boat Shop, a corporation, [56] to the D/V "Flying Cloud," are claimed to have been for current operation and/or repairs, to the respondent vessel; and if so, state with particularity the details and items of each, with dates and sums charged for each.

4. State whether or not the Al Larson Boat Shop, a corporation, through its officers and agents, knew of the mortgage of the libelant, dated August 18, 1948, in the principal sum of \$25,000.00, and the

mortgage of Kazulin-Cole Shipbuilding Corporation, dated August 18, 1948, in the principal sum of \$10,000.00, prior to and at the time the said claim or debt of Al Larson Boat Shop, a corporation, against the D/V "Flying Cloud" was created.

5. If the answer to Interrogatory 4 is in the negative, state whether or not the Al Larson Boat Shop, a corporation, by and through its officers and agents, inspected the official document of the "Flying Cloud," prior to or at the time of the creation of the claim or debt of the Al Larson Boat Shop, a corporation, against the "Flying Cloud."

6. If the answer to Interrogatory 4 is in the negative, state whether or not, prior to or at the time of creation of the claim or debt of Al Larson Boat Shop, a corporation, against the "Flying Cloud," the Al Larson Boat Shop, a corporation, by and through its officers and agents, searched or had searched the official records of mortgages of the Collector of Customs at Tacoma, State of Washington, to ascertain what mortgages were recorded against and upon said vessel.

Dated: January 3, 1951.

Respectfully submitted,

/s/ HERBERT R. LANDE,
Proctor for Libelant.

Affidavit of service by mail attached.

[Endorsed]: Filed January 4, 1951. [57]

[Title of District Court and Cause.]

ANSWERS OF INTERVENOR, CROFTON
DIESEL ENGINE COMPANY, INC., TO
INTERROGATORIES PROPOUNDED TO
SAID INTERVENER BY LIBELANT

Interrogatory No. 1.

Yes.

Interrogatory No. 2.

Attached hereto is a copy of the invoices showing the amount, the dates, the details [68] of the charges, and the nature, character and particulars of each charge; said invoices are for the use of counsel for Libelant, to be returned to counsel for Crofton Diesel Engine Company, Inc., prior to the time of trial.

Interrogatory No. 3.

Yes. See answer to Interrogatory No. 2.

Interrogatory No. 4.

Yes. A Certified Copy of the Mortgage is attached hereto for the use of Counsel for Libelant, to be returned to Counsel for Crofton Diesel Engine Company, Inc., prior to the time of trial.

Interrogatory No. 5.

Yes, to this extent—Peter Radic delivered to counsel for Crofton Diesel Engine Company, Inc., and Al Larson Boat Shop, a letter from B. A. McKenzie & Co., Inc., dated March 28, 1950, enclosing a copy of the Certificate of Ownership of the vessel, showing of record the two mortgages alleged to be pre-

ferred, but Crofton Diesel Engine Company, Inc., had no notice prior to on or about May 1, 1950, and had no notice of the contents of the preferred mortgages until long after the filing of the libel, and then counsel for the Intervener, Crofton Diesel Engine Company, Inc., demanded of Charles Kent, the right to see the two mortgages and the assignment, and at that time was shown the same.

Interrogatory No. 6.

See answer to Interrogatory No. 5. [69]

Interrogatory No. 7.

See answer to Interrogatory No. 5.

Dated: 10 January, 1951.

CROFTON DIESEL ENGINE COMPANY, INC.,
a Corporation,

By /s/ WILLIAM B. CROFTON,
President.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed January 12, 1951. [70]

[Title of District Court and Cause.]

ANSWERS TO INTERVENER, AL LARSON
BOAT SHOP, TO INTERROGATORIES
PROPOUNDED TO SAID INTERVENER
BY LIBELANT

Interrogatory No. 1.

Yes.

Interrogatory No. 2.

Previously furnished. [72]

Interrogatory No. 3.

Yes—see answer to Interrogatory No. 2.

Interrogatory No. 4.

Yes, to this extent—Peter Radic delivered to counsel for Al Larson Boat Shop, and Crofton Diesel Engine Company, Inc., a letter from B. A. McKenzie & Co., Inc., dated March 28, 1950, enclosing a copy of the Certificate of Ownership of the vessel, showing of record the two mortgages alleged to be preferred, but Al Larson Boat Shop had no notice prior to on or about May 1, 1950, and had no notice of the contents of the preferred mortgages until long after the filing of the libel, and then counsel for Intervenor, Al Larson Boat Shop, demanded of Charles Kent, the right to see the two mortgages and the assignment, and at that time was shown the same.

Interrogatory No. 5.

Interrogatory No. 4 answered in the affirmative.

Interrogatory No. 6.

Interrogatory No. 4 answered in the affirmative.

Dated: 10 January, 1951.

AL LARSON BOAT SHOP,
A California Corporation,

By /s/ ADOLPH LARSON,
Secretary-Treasurer.

Duly Verified.

Affidavit of service by mail attached.

[Endorsed]: Filed January 12, 1951. [73]

[Title of District Court and Cause.]

OFFER TO STIPULATE

Interveners, Crofton Diesel Engine Company, Inc., and Al Larson Boat Shop, offer to stipulate to the following:

1. The corporate entity of the corporate parties is [79] conceded.
2. The respondents are residents of San Pedro, California.
3. The mortgages of the Libelant, and the Intervener, Crofton Diesel Engine Company, Inc., were filed and recorded at the place and on the dates indicated. All mortgages and notes are in default.
4. The Libelant's notes and mortgages were given as evidence and security for loans to the Respondents to purchase the ship.

5. The note and mortgage to Crofton Diesel Engine Company, Inc., was given as evidence and security for goods, wares and services furnished the vessel on order of the Respondent owners.

6. Interveners, Al Larson Boat Shop and Ets-Hokin & Galvan, furnished goods, wares and services to the ship on order of the Respondents.

7. That the salvage claim of Intervener, John Marumoto, is uncontested save as to amount; that the salvage awarded is a paramount and senior lien to the claims of all others; that the vessel was insured against salvage; that Libelant is an assured and loss-payee; that Interveners are entitled to the protection of said insurance; that said insurance is in the form of indemnity; that there be set aside in the registry of the Court, Three Thousand Five Hundred and No/100 Dollars (\$3,500.00) for the use and benefit of said Marumoto, conditioned upon his first exhausting his rights to collect his salvage award from said Underwriters.

8. If the Libelant's mortgages are in fact and law Preferred Ship's Mortgages, then the liens of Al Larson Boat Shop and Ets-Hokin & Galvan, and Crofton's Preferred Ship's Mortgage claim are all subject to the effect of said mortgages. If the Libelant's mortgages are not in fact and law Preferred Ship's Mortgages, then [80] Libelant's claim is junior, and it is entitled to recover, if at all, only after all other maritime claims have been paid in full.

9. As between Crofton Diesel Engine Company, Inc., on the one hand, and Al Larson Boat Shop and Ets-Hokin & Galvan on the other, parts of the claims are junior to Crofton's Preferred Ship's Mortgage, and parts are senior, as follows:

Paramount to Crofton's Preferred Ship's Mortgage

- (a) Al Larson Boat Shop \$1,164.08
- (b) Ets-Hokin & Galvan (to be determined).

Junior to Crofton's Preferred Ship's Mortgage

- (a) Al Larson Boat Shop \$2,209.83
- (b) Ets-Hokin & Galvan (to be determined).

10. Among the issues to be tried are:

(a) Do the Libelant's mortgages constitute in law and fact Preferred Ship's Mortgages?

(b) If said mortgages are preferred in law and fact, then there shall be determined what portions of Interveners' claims, if any, are preferred to the Libelant's mortgages.

(c) If Libelant's mortgages are held to be preferred in law and fact, then the amounts due the parties and the order of preferences.

(d) The preference of the Interveners, Ets-Hokin & Galvan, [81] if any it has.

11. The amounts due the Libelant, and Interveners, Crofton Diesel Engine Company, Inc., and Al Larson Boat Shop (without conceding the legal effect of said mortgages or claims as above provided) are as follows:

(1) Libelant's mortgage and note dated October 31, 1949

Principal Unpaid.....	\$20,267.40
Interest calculated to January 1, 1951.....	1,188.88
	<hr/>
	\$21,456.28
Attorney's Fees at 10%.....	2,145.62
	<hr/>
	\$23,601.90
Costs \$.....	
	<hr/>

(2) Libelant's mortgage and note dated November 30, 1950

Principal Unpaid.....	\$10,000.00
Interest calculated to January 1, 1951.....	650.00
	<hr/>
	\$10,650.00
Attorney's Fees at 10%.....	1,065.00
	<hr/>
	\$11,715.00
Costs \$.....	
	<hr/>

Recap of (1) and (2).....	1st Mortgage	\$23,601.90
	2nd Mortgage	11,715.00
		<hr/>
		\$35,316.90
Costs \$.....		
		<hr/>

(3) Claim of Intervener, Al Larson Boat Shop
Amount due Larson.....\$ 1,164.08

(including interest to January 1, 1951)

Costs \$.....

(4) Intervener Crofton's Third Preferred Ship's
Mortgage

Principal Unpaid.....\$ 6,500.00

Interest calculated to

January 1, 1951..... 255.65

\$ 6,755.65

Attorneys' Fees at 10%..... 675.56

\$ 7,431.21

Costs \$.....

(5) Claim of Intervener, Al Larson Boat Shop

Amount due Larson.....\$ 2,209.83

(including interest to

January 1, 1951)

Costs \$.....

Dated January 16, 1951.

EKDALE &
SHALLENBERGER,By /s/ ARCH E. EKDALE,
Proctors for Interveners, Crofton Diesel Engine
Company, Inc., and Al Larson Boat Shop.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 20, 1951. [83]

[Title of District Court and Cause.]

LIBELANT'S ACCEPTANCE (PARTIAL) OF
OFFER TO STIPULATE, MADE BY IN-
TERVENERS AL LARSON BOAT SHOP
AND CROFTON DIESEL ENGINE COM-
PANY, INC.

Libelant joins in the stipulation offered by In-
terveners Al Larson Boat Shop and Crofton Diesel
Engine Company, Inc., in the following [85] re-
spects:

1. Libelant stipulates to facts stated in Para-
graphs (1), (2), (3), (4), (5), (6), and (7) of
offer.

2. Libelant refuses to join in the purported
stipulation set forth in Paragraph (8) of the offer
in that said Paragraph (8) does not contain a stipu-
lation as to facts, but as to the law of the case,
which is a matter for the Court.

3. Libelant stipulates to facts stated in Para-
graph (9) of offer.

4. Libelant will file a "Pre-Trial Statement of
Issues" to cover the matters in Paragraph (10) of
offer.

5. Libelant stipulates to facts set forth in Para-
graph (11) of offer.

Dated January 22, 1951.

HERBERT R. LANDE &
CHARLES H. KENT,

By /s/ HERBERT R. LANDE,
Proctors for Libelant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 23, 1951. [86]

[Title of District Court and Cause.]

ORDER FOR FINDINGS AND DECREE

This cause having been tried and submitted for decision as to all parties except intervener John Marumoto, [117] findings and decree are now ordered as follows:

(a) in favor of libelant for the foreclosure of libelant's first preferred ship's mortgage [Exhibit 7] and libelant's second preferred ship's mortgage [Exhibit 8] as prayed for, plus an additional sum of \$1,462.39 advanced by libelant to cover insurance premiums on the mortgaged vessel and plus an allowance of \$3,500 for attorneys' fees and libelant's costs;

(b) in favor of intervener Crofton Diesel Engine Company, Inc., for the foreclosure of said intervener's third preferred mortgage on the vessel [Intervener Crofton's Exhibit "A"] as prayed for, plus an allowance of \$675 for attorneys' fees and an award of \$229.27 for supplies and materials furnished by said intervener over and above the amount of the mortgage, and said intervener's costs;

(c) in favor of intervener Al Larson Boat Works for the sum of \$3,197.76, and said intervener's costs;

(d) in favor of intervener Ets-Hokin & Galvan for \$867.92, and said intervener's costs;

(e) with priorities fixed as follows:

First: all claims secured by libelant's first and second preferred mortgages, including the sum of \$1,462.39 advanced to cover insurance premiums,

taxable costs and the sum of \$3,500 for attorneys' fees;

Second: the claim of Al Larson Boat Works to the extent of \$1,013.06;

Third: the claim of Ets-Hokin & Galvan to the extent of \$35.97;

Fourth: the claim of Crofton Diesel [118] Engine Company, Inc., to the extent of \$229.27;

Fifth: the claim of Ets-Hokin & Galvan to the extent of \$808.80;

Sixth: the claim of Al Larson Boat Works to the extent of \$1,664.89;

Seventh: all claims secured by the third preferred mortgage of Crofton Diesel Engine Company, Inc., including taxable costs and the sum of \$675 for attorneys' fees;

Eighth: the claim of Al Larson Boat Works to the extent of \$55.14;

Ninth: the claim of Al Larson Boat Works to the extent of \$59.55, and the balance of the claim of Ets-Hokin & Galvan in the sum of \$23.15 plus taxable costs; and

Tenth: the balance of the claim of Al Larson Boat Works in the sum of \$5.12 plus taxable costs.

It Is Further Ordered that proctors for libelant prepare findings of fact, conclusions of law and decree accordingly and settle under local rule 7 within five days.

It Is Further Ordered that the Clerk this day

serve this order by United States mail on the proctors for the parties appearing in this cause.

July 19, 1951.

/s/ WM. C. MATHES,

United States District Judge.

[Endorsed]: Filed July 19, 1951. [119]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above-entitled matter came on regularly for trial as to all parties except intervener John Marumoto, on July 9, 1951, in the above-entitled Court, Honorable William C. Mathes, United States District Judge, presiding; Herbert R. Lande and Charles H. Kent [120] appearing as proctors for libelant; Ekdale & Shallenberger by Arch E. Ekdale as proctors for interveners Crofton Diesel Engine Company, Inc., and Al Larson Boat Works, a corporation; and Hansen & Sweeney by John R. Y. Lindley as proctors for intervener Ets-Hokin & Galvan, a corporation; and it appearing that the respondent vessel has been seized by the Marshal of this Court under a monition issued herein and sold under previous order of Court, the sale confirmed and the proceeds of sale deposited in Court; and it further appearing that a citation and copy of the libel of the interveners Crofton Diesel Engine Company, Inc., and Al Larson Boat Works has

been served personally on the respondents Peter Radic and John Kremenec, and that they have failed to answer same or appear herein, and that default has been taken and entered against them by said interveners, and the default of all persons not appearing having been entered; and a stipulation having been filed by all parties appearing in this action that the sum of \$3,500.00 of the funds on deposit in the registry of the above Court be withheld and remain undisbursed until the issues raised by the libel in intervention of John Marumoto and the answer of Peter Radic and John Kremenec are settled or otherwise disposed of; and evidence oral and documentary having been taken and introduced by all parties so appearing, and the cause having been submitted for decision; the Court makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. That it is true that on August 18, 1948, and now, the libelant was and is a national banking corporation and a citizen of the United States.

2. That it is true that on August 18, 1948, the respondent oil screw Flying Cloud was an American fishing vessel duly enrolled and documented under the laws of the United States at Tacoma, State of Washington, and that the home port of said [121] vessel was said City of Tacoma; that said vessel was owned by Peter Radic, owning 50%, and John Kremenec, owning 50%.

3. That it is true that on August 18, 1948, said Peter Radic and John Kremenec executed their promissory note in the sum of \$25,000.00 to the libelant, payable on October 31, 1949, with interest at 5% per annum; that said note further provided that in the event suit were instituted on the note, that the makers thereof agreed to pay a reasonable attorneys' fee to the holder of the note; that the libelant is now the holder of said note.

4. That it is true that on August 18, 1948, the said Peter Radic and John Kremenec executed a mortgage upon the whole of said vessel Flying Cloud in favor of libelant, to secure the payment of said note for \$25,000.00; that said mortgage provided that it was also given to secure the terms of the said promissory note, and provided that the said Peter Radic and John Kremenec should keep the respondent vessel insured against marine risks for an amount at least equal to the unpaid indebtedness to libelant, and that if Peter Radic and John Kremenec failed to do so, libelant could procure such insurance, the cost of which was to be repaid libelant by Peter Radic and John Kremenec, upon demand, and that the said mortgage was security for the repayment thereof; that said Peter Radic and John Kremenec failed to keep the said vessel insured, and libelant expended \$1,462.39 for such insurance premiums, no part of which has been repaid.

5. That it is true that the sum of \$4,732.60 has been paid upon the principal of said note, and that

the balance due, owing and unpaid is \$20,267.40; that interest on said note has been paid to October 31, 1949; that interest from November 1, 1949, to June 30, 1951, amounts to \$1,688.95, and that said interest is due, owing and unpaid to the [122] libelant.

6. That it is true that said mortgage on the respondent vessel was recorded at Tacoma, State of Washington, on August 18, 1948, by the Collector of Customs at Tacoma; that said mortgage was endorsed on the outstanding document of said vessel on August 24, 1948, by the Collector of Customs at Los Angeles, State of California, by request of the Collector of Customs at Tacoma, Washington, and that an affidavit was made by Peter Radic and John Kremenec and filed with the record at Tacoma, that the said mortgage was made in good faith.

7. That it is true that the aforesaid mortgage did not stipulate that the mortgagee waived the preferred status thereof.

8. That it is true that on August 18, 1948, said Peter Radic and John Kremenec executed their promissory note in the sum of \$10,000.00 to the Kazulin Cole Shipbuilding Corporation, payable on November 30, 1949, with interest at 6% per annum; that said note further provided that in the event suit were instituted on the note, that the makers thereof agreed to pay a reasonable attorney's fees to the holder of the note; that the libelant is now the holder of said note.

9. That it is true that on August 18, 1948, the said Peter Radic and John Kremenec executed a mortgage upon the whole of said vessel Flying Cloud in favor of the Kazulin Cole Shipbuilding Corporation, to secure the payment of said note for \$10,000.00; that said mortgage provided that it was also given to secure the terms of said promissory note.

10. That it is true that no sum has been paid upon the principal of said note, and that the balance due, owing and unpaid is \$10,000.00; that interest on said note has been paid to November 30, 1949; that interest from December 1, 1949, to June 30, 1951, amounts to \$950.00; and that said interest is due, owing and unpaid to the libelant. [123]

11. That it is true that said mortgage on the respondent vessel was recorded at Tacoma, State of Washington, on August 19, 1948, by the Collector of Customs at Tacoma; that said mortgage was endorsed on the outstanding document of said vessel on August 24, 1948, by the Collector of Customs at Los Angeles by request of the Collector of Customs at Tacoma, Washington; and that an affidavit was made by Peter Radic and John Kremenec and filed with the record of the mortgage at Tacoma; that the said mortgage was made in good faith.

12. That it is true that the aforesaid mortgage did not stipulate that the mortgage waived the preferred status thereof.

13. That it is true that on October 19, 1949, the

said Kazulin Cole Shipbuilding Corporation assigned said preferred mortgage to the libelant herein, and that said assignment was recorded at the Custom House, Tacoma, Washington, on March 23, 1950, and that said assignment was endorsed on the document of the respondent vessel on March 24, 1950, by the Collector of Customs at Los Angeles, by request of the Collector of Customs at Tacoma, Washington.

14. That it is true that on May 9, 1950, and now, intervener Crofton Diesel Engine Company, Inc., a corporation, was and is a citizen of the United States.

15. That it is true that on May 9, 1950, said Peter Radic and John Kremenec executed their promissory note in the sum of \$6,500.00 to the said intervener Crofton Diesel Engine Company, Inc., payable on or before May 1, 1952, with interest at 6% per annum; that said note further provided that in the event suit were instituted on said note, that the makers thereof agreed to pay a reasonable attorney's fee to the holder of the note; that the said intervener Crofton Diesel Engine Company, Inc., is now the holder of said note. [124]

16. That it is true that on May 9, 1950, the said Peter Radic and John Kremenec executed a third mortgage upon the whole of the respondent vessel, in favor of intervener Crofton Diesel Engine Company, Inc., to secure the payment of said note of \$6,500.00; that said mortgage also provided that it was security for further advances of credit from the

intervener Crofton Diesel Engine Company, Inc., to the said makers of said note; that said mortgage provided that if the respondent vessel be seized by the Marshal and not be released by the said mortgagors within ten (10) days, the debt would become immediately due and the said mortgage could be foreclosed; that the respondent vessel was seized by the United States Marshal and the said mortgagors failed to secure the release of said vessel within ten (10) days thereof.

17. That it is true that no sums have been paid upon the principal or interest of said note of intervener Crofton Diesel Engine Company, Inc.; that said intervener furnished supplies and materials to the mortgagors Peter Radic and John Kremenec in the sum of \$229.27, no part of which has been paid; that there is due, owing and unpaid intervener Crofton Diesel Engine Company, Inc., the sum of \$6,729.27, plus interest to June 30, 1951, in the sum of \$512.50.

18. That it is true that said third mortgage to intervener Crofton Diesel Engine Company, Inc., was recorded in the Office of the Collector of Customs at Tacoma, Washington, on May 29, 1950, and was endorsed on the outstanding document of the respondent vessel; that an affidavit of good faith was made by Peter Radic and John Kremenec and filed with the said record of said mortgage.

19. That it is true that the said third mortgage to intervener Crofton Diesel Engine Company, Inc.,

did not stipulate that the mortgage waived the preferred status thereof. [125]

20. That it is true that the reasonable value of the services of the proctors for the libelant herein is the sum of \$3,500.00.

21. That it is true that the reasonable value of the services of the proctors for the intervener Crofton Diesel Engine Company, Inc., is the sum of \$675.00.

22. That it is true that intervener Al Larson Boat Works furnished work and materials to the respondent vessel for current operations and repairs in the sum of \$3,497.76, of which \$300.00 was paid on March 1, 1950, and that \$3,197.76 is now due, owing and unpaid said intervener.

23. That it is true that intervener Ets-Hokin & Galvan furnished labor and material to the respondent vessel for current operations and repairs in the sum of \$867.92, no part of which has been paid and which is now due, owing and unpaid said intervener.

24. That it is true that the sequence of supplies, materials and labor furnished to the said respondent vessel by the interveners was as follows:

Furnished After Date of Libelant's Mortgages:

(a)	Al Larson Boat Works.....	\$1,013.06
(b)	Ets-Hokin & Galvan.....	35.97
(c)	Crofton Diesel Engine Company Inc.....	229.27
(d)	Ets-Hokin & Galvan.....	808.80

(e) Al Larson Boat Works..... 1,664.89

Furnished After Mortgage of Intervener, Crofton Diesel Engine Company, Inc.:

(f) Al Larson Boat Works.....\$ 455.14

(g) Al Larson Boat Works \$59.55
and Ets-Hokin & Galvan \$23.15,
furnished contemporaneously.

(h) Al Larson Boat Works..... 5.12

Conclusions of Law

25. That the mortgage of the libelant on the respondent vessel given to secure the note for \$25,000.00, was a valid first preferred ship's mortgage on said respondent vessel, and is a valid first lien on the proceeds of sale of said respondent vessel held in the registry of this Court; that the sum of \$20,267.40 is due upon the principal of said note, plus interest to June 30, 1951, in the sum of \$1,688.95, and further interest at the rate of 5% per annum from said date to the date of final decree herein, plus the sum of \$1,462.39, all of which libelant is entitled to recover first in order from the money so held in the registry of this Court.

26. That the mortgage on the respondent vessel given to the Kazulin Cole Shipbuilding Corporation to secure the note for \$10,000.00, and assigned to libelant, was a valid second preferred ship's mortgage, and is a valid second lien on the proceeds of sale of said respondent vessel held in the registry of this Court; that the sum of \$10,000.00 is due upon the principal of said note, plus interest to June 30, 1951, in the sum of \$950.00, and further

interest at the rate of 6% per annum from said date to the date of final decree herein, all of which the libelant is entitled to recover second in order from the money so held in the registry of this Court.

27. That the libelant is entitled to recover the sum of \$3,500.00 from the proceeds of sale of said respondent vessel held in the registry of this Court, under the provisions of the aforesaid preferred mortgages, and that said recovery is entitled to be third in order.

28. That the libelant is entitled to recover taxable costs in the sum of \$....., and such recovery shall be fourth in order from the proceeds of sale of said respondent vessel held in the registry of this Court. [127]

29. That intervener Al Larson Boat Works acquired a maritime lien on respondent vessel and is entitled to recover the sum of \$1,013.06 from the proceeds of sale in the registry of this Court, and such recovery shall be fifth in order.

30. That intervener Ets-Hokin & Galvan acquired a maritime lien on respondent vessel and is entitled to recover the sum of \$35.97 from the proceeds of sale in the registry of this Court, and such recovery shall be sixth in order.

31. That intervener Crofton Diesel Engine Company, Inc., acquired a maritime lien on respondent vessel and is entitled to recover the sum of \$229.27 from the proceeds of sale in the registry of this

Court, and such recovery shall be seventh in order.

32. That intervener Ets-Hokin & Galvan acquired a maritime lien on respondent vessel and is entitled to recover the sum of \$808.80 from the proceeds of sale in the registry of this Court, and such recovery shall be eighth in order.

33. That intervener Al Larson Boat Works acquired a maritime lien on respondent vessel and is entitled to recover the sum of \$1,664.89 from the proceeds of sale in the registry of this Court, and such recovery shall be ninth in order.

34. That the mortgage on the respondent vessel, given to Crofton Diesel Engine Company, Inc., to secure the note for \$6,500.00 was a valid third preferred ship's mortgage on respondent vessel and is a valid tenth lien on the proceeds of sale of the respondent vessel held in the registry of this Court; that the sum of \$6,500.00 is due on the principal of said note plus interest in the sum of \$512.50 to June 30, 1951, and further interest at the rate of 6% per annum from said date to the date of final decree herein; all of which said intervener Crofton Diesel Engine Company, Inc., is entitled to recover tenth in order from the said proceeds of sale in the registry of this Court. [128]

35. That intervener Crofton Diesel Engine Company, Inc., is entitled to recover \$675.00 from the proceeds of sale of the respondent vessel held in the registry of this Court, under the provisions of said third preferred ship's mortgage, and that such recovery shall be eleventh in order.

36. That intervener Crofton Diesel Engine Company, Inc., is entitled to recover taxable costs in the sum of \$. from the proceeds of sale of the respondent vessel held in the registry of this Court, and such recovery shall be twelfth in order.

37. That intervener Al Larson Boat Works acquired a maritime lien on respondent vessel and is entitled to recover the sum of \$455.14 from the proceeds of sale of said vessel held in the registry of this Court, and such recovery shall be thirteenth in order.

38. That intervener Al Larson Boat Works acquired a maritime lien on respondent vessel and is entitled to recover the sum of \$59.55 plus taxable costs in the sum of \$.; Ets-Hokin & Galvan acquired a maritime lien on respondent vessel and is entitled to recover the sum of \$23.15 plus taxable costs in the sum of \$.; all pro rata from the proceeds of sale of said vessel now held in the registry of this Court, and such recovery shall be fourteenth in order.

39. That intervener Al Larson Boat Works acquired a maritime lien on respondent vessel and is entitled to recover the sum of \$5.12 plus taxable costs in the sum of \$., such recovery from said proceeds of sale held in the registry of this Court shall be fifteenth in order.

40. That if the net proceeds of the sale of the respondent vessel shall be insufficient to pay the amounts awarded as aforesaid to interveners Al

Larson Boat Works, and Crofton Diesel Engine Company, Inc., with interest as provided by law, then judgment for such deficiency shall be entered against said respondents [129] Peter Radic and John Kremenec, jointly and severally, for the amount of such deficiency.

Dated July 30, 1951.

/s/ WM. C. MATHES,

United States District Judge.

Approved As to Form:

EKDALE &

SHALLENBERGER,

/s/ ARCH E. EKDALE.

HANSEN & SWEENEY,

R. D. SWEENEY,

By /s/ JOHN R. LINDLEY.

/s/ GEORGE M. STEPHENSON.

Receipt of Copy acknowledged.

[Endorsed]: Filed July 31, 1951. [130]

In the District Court of the United States, Southern
District of California, Central Division

In Admiralty—No. 12,271-WM

PUGET SOUND NATIONAL BANK OF TA-
COMA, a National Banking Corporation,

Libelant,

vs.

AMERICAN OIL SCREW FLYING CLOUD,
Her Engines, Tackle, Apparatus, Boats, Fur-
niture and Equipment; and PETER RADIC
and JOHN KREMENIC,

Respondents.

CROFTON DIESEL ENGINE COMPANY, INC.,
a California Corporation; and AL LARSON
BOAT SHOP, a California Corporation,

Interveners.

JOHN MARUMOTO,

Intervener.

ETS-HOKIN & GALVAN,

Intervener.

INTERLOCUTORY DECREE

The above-entitled matter came on regularly for trial as to all parties except intervener, John Marumoto, on July 9, 1951, in the above-entitled court, Honorable William C. Mathes, United States District Judge, presiding; Herbert R. Lande and Charles H. Kent [132] appearing as proctors for

libelant; Ekdale & Shallenberger by Arch E. Ekdale as proctors for interveners, Crofton Diesel Engine Company, Inc., and Al Larson Boat Works, a corporation; and Hansen & Sweeney by John R. Y. Lindley as proctors for intervener Ets-Hokin & Galvan, a corporation; and it appearing that the respondent vessel has been seized by the Marshal of this Court under a monition issued herein and sold under previous order of Court, the sale confirmed and the proceeds of sale deposited in Court; and it further appearing that a citation and copy of the libel of the interveners Crofton Diesel Engine Company, Inc., and Al Larson Boat Works has been served personally on the respondents Peter Radic and John Kremenec, and that they have failed to answer same or appear herein, and that default has been taken and entered against them by said interveners, and the default of all persons not appearing having been entered; and a stipulation having been filed by all parties appearing in this action that the sum of \$3,500.00 of the funds on deposit in the registry of the above Court be withheld and remain undisbursed until the issues raised by the libel in intervention of John Marumoto and answer of Peter Radic and John Kremenec are settled or otherwise disposed of; and evidence oral and documentary having been taken and introduced by all parties so appearing and the cause having been submitted for decision, and written findings of fact and conclusions of law having been made and filed herein;

Now, Therefore, It Is Ordered, Adjudged and Decreed:

1. That the libelant, Puget Sound National Bank of Tacoma, do have and recover from the proceeds of sale of the respondent vessel Flying Cloud, now held in the registry of this Court, the sum of \$23,-418.74, plus interest at 5% on \$20,267.40 from July 1, 1951, to the date of this decree, and that such recovery shall be first in order. [133]

2. That the libelant, Puget Sound National Bank of Tacoma, do have and recover from the proceeds of sale of the respondent vessel, now held in the registry of this Court, the further sum of \$10,-950.00, plus interest at 6% on \$10,000.00 from July 1, 1951, to the the date of this decree, and that such recovery shall be second in order.

3. That the libelant, Puget Sound National Bank of Tacoma, do have and recover from the proceeds of sale of the respondent vessel, now held in the registry of this Court, the further sum of \$3,500.00, and that such recovery shall be third in order.

4. That the libelant, Puget Sound National Bank of Tacoma, do have and recover from the proceeds of sale of the respondent vessel, now held in the registry of this Court, taxable costs in the sum of \$1,486.73, and that such recovery shall be fourth in order.

5. That intervener, Al Larson Boat Works, do have and recover from the proceeds of sale of the respondent vessel, now held in the registry of this

Court, the sum of \$1,013.06, and that such recovery shall be fifth in order.

6. That intervener, Ets-Hokin & Galvan, do have and recover from the proceeds of sale of the respondent vessel, now held in the registry of this Court, the sum of \$36.97, and that such recovery shall be sixth in order.

7. That intervener, Crofton Diesel Engine Company, Inc., do have and recover from the proceeds of sale of the respondent vessel, now held in the registry of this Court, the sum of \$229.27, and that such recovery shall be seventh in order.

8. That intervener, Ets-Hokin & Galvan, do have and recover from the proceeds of sale of the respondent vessel, now held in the registry of this Court, the further sum of \$808.80, and that such recovery shall be eighth in order. [134]

9. That intervener, Al Larson Boat Works, do have and recover from the proceeds of sale of the respondent vessel, now held in the registry of this Court, the further sum of \$1,664.89, and that such recovery shall be ninth in order.

10. That intervener, Crofton Diesel Engine Company, Inc., do have and recover from the proceeds of sale of the respondent vessel, now held in the registry of this Court, the further sum of \$7,012.50, plus interest at 6% on \$6,500.00 from July 1, 1951, to the date of this decree, and that such recovery shall be tenth in order.

11. That intervener, Crofton Diesel Engine Company, Inc., do have and recover from the proceeds of sale of the respondent vessel, now held in the registry of this Court, the further sum of \$675.00, and that such recovery shall be eleventh in order.

12. That intervener, Crofton Diesel Engine Company, Inc., do have and recover from the proceeds of sale of the respondent vessel, now held in the registry of this Court, taxable costs in the further sum of \$48.80, and that such recovery shall be twelfth in order.

13. That intervener, Al Larson Boat Works, do have and recover from the proceeds of sale of the respondent vessel, now held in the registry of this Court, the further sum of \$455.14, and that such recovery shall be thirteenth in order.

14. That intervener, Al Larson Boat Works, do have and recover the further sum of \$59.55, and intervener, Ets-Hokin & Galvan, do have and recover the further sum of \$23.15, plus taxable costs in the sum of \$....., from the proceeds of sale of the respondent vessel, now held in the registry of this Court, and that such recoveries shall share pro rata in the fourteenth order of [135] recovery.

15. That intervener, Al Larson Boat Works, do have and recover from the proceeds of sale of the respondent vessel, now held in the registry of this Court, the further sum of \$5.12, plus taxable costs

in the sum of \$....., and that such recovery shall be fifteenth in order.

16. That if the net proceeds of the sale of the respondent vessel shall be insufficient to pay the amounts awarded as aforesaid to interveners, Al Larson Boat Works and Crofton Diesel Engine Company, Inc., with interest as provided by law, then judgment for such deficiency shall be entered against said respondents Peter Radic and John Kremenec, jointly and severally, for the amount of such deficiency, in favor of said interveners.

It Is Further Ordered that of the funds in the registry of this Court, \$3,500.00 shall be first withheld by the Clerk, and that distribution of the remaining funds shall be as above ordered; and that upon the final disposition of the issues raised by the libel of John Marumoto and answer thereto, any of the parties appearing herein, as above stated, may apply to the Court for an order of distribution thereof.

Costs taxed favor Ets-Hokin & Galvan at \$53.65.

Dated July 30, 1951.

/s/ WM. C. MATHES,

United States District Judge.

Approved as to form:

EKDALE &

SHALLENBERGER,

ARCH E. EKDALE.

HANSEN & SWEENEY,

R. D. SWEENEY,

By /s/ JOHN R. Y. LINDLEY.

/s/ GEORGE M. STEPHENSON.

Receipt of copy acknowledged.

[Endorsed]: Filed July 31, 1951.

Docketed and entered August 3, 1951. [136]

In the District Court of the United States, Southern
District of California, Central Division

In Admiralty—No. 12,271-WM

PUGET SOUND NATIONAL BANK OF TA-
COMA, a National Banking Corporation,
Libelant,

vs.

AMERICAN OIL SCREW FLYING CLOUD,
Her Engines, Tackle, Apparatus, Boats, Fur-
niture and Equipment; and PETER RADIC
and JOHN KREMENIC,

Respondents.

CROFTON DIESEL ENGINE COMPANY, INC.,
a California Corporation; and AL LARSON
BOAT SHOP, a California Corporation,

Interveners.

JOHN MARUMOTO,

Intervener.

ETS-HOKIN & GALVAN,

Intervener.

FINAL DECREE

The above-entitled matter came on regularly for trial as to all parties, except Intervener, John Marumoto, on July 19, 1951, in the above-entitled Court, Honorable William C. Mathes, United States District Judge, presiding; Herbert R. Lande and Charles H. [140] Kent appearing as proctors for Libelant; Ekdale & Shallenberger, by Arch E. Ekdale, as proctors for Interveners, Crofton Diesel Engine Company, Inc., and Al Larson Boat Shop, both corporations; and Hansen & Sweeney, by John R. Y. Lindley, as proctors for Intervener, Ets-Hokin & Galvan, a corporation; and it appearing that the respondent Vessel has been seized by the Marshal of this Court, under a monition issued herein, and sold under previous order of the Court, the sale confirmed and the proceeds of sale deposited in the registry of the Court; and it further appearing that a citation and copy of the libel of the Interveners, Crofton Diesel Engine Company, Inc., and Al Larson Boat Shop, has been served personally on the Respondents, Peter Radic and John Kremenec, and that they have failed to answer same, or appear herein, and that default has been taken and entered against them by said Interveners, and default of all persons having been entered; and a stipulation being filed by all parties in this action that the sum of Three Thousand Five Hundred and No/100 Dollars (\$3,500.00) of the funds on deposit in the registry of the Court be withheld and remain undisbursed until the issues raised by the libel in intervention of John Marumoto are disposed of; and evidence, oral and documentary,

having been taken and introduced by all parties appearing, and the cause having been submitted for decision, and written findings of fact and conclusions of law having been made and filed herein, and an Interlocutory Decree having been signed and entered on August 3, 1951, leaving undisposed of the claim of John Marumoto, and the rank and priority thereof, and leaving undisposed of the proceeds held in the registry by stipulation for the satisfaction of any claim of John Marumoto, and leaving undecided the amount of any deficiency to which Interveners, Crofton Diesel Engine Company, Inc., and Al Larson Boat Shop, are entitled, and subsequent to the entry of said Interlocutory Decree, it appearing from the record that the Intervening Libel of John Marumoto has been dismissed, and the funds in the registry disbursed; [141] Thirty-Nine Thousand Five Hundred Three and 36/100 Dollars (\$39,503.36) to Puget Sound National Bank of Tacoma, and Nine Hundred Seventy-One and 29/100 Dollars (\$971.29) to Al Larson Boat Shop.

Now, Therefore, It Is Ordered, Adjudged and Decreed:

1. That the Findings of Fact and Conclusions of Law heretofore made be adopted, and that the Interlocutory Decree heretofore entered thereon be adopted, and the order of priority of claims of parties set forth therein, confirmed;

And It Is Further Ordered, Adjudged and Decreed:

1. That John Marumoto take nothing by his Libel in Intervention;

2. That the Intervener, Al Larson Boat Shop, have judgment in personam against Peter Radic and John Kremenec, and each of them, in personam, in the sum of Two Thousand Two Hundred Twenty-Six and 47/100 Dollars (\$2,226.47).

3. That the Intervener, Crofton Diesel Engine Company, Inc., have judgment in personam against Peter Radic and John Kremenec, and each of them, in personam, in the sum of Seven Thousand Nine Hundred Ninety-Eight and 22/100 Dollars (\$7,998.22).

Signed and dated this 5th day of October, 1951.

/s/ WM. C. MATHES,

Judge of the United States
District Court.

Approved as to form:

HERBERT R. LANDE,

CHAS. H. KENT,

HERBERT R. LANDE,

Attorney for Libelant.

HANSEN & SWEENEY,

By /s/ JOHN R. Y. LINDLEY,

Attorneys for Ets-Hokin &
Galvan.

EKDALE &

SHALLENBERGER,

By /s/ GORDON P.

SHALLENBERGER,

Attorneys for Crofton Diesel Engine Co. and Al
Larson Boat Shop.

[Endorsed]: Filed October 8, 1951.

Docketed and entered October 8, 1951. [142]

[Title of District Court and Cause.]

PETITION FOR APPEAL

To: The Honorable William C. Mathes, Judge of the United States District Court for the Southern District of California, Central [143] Division:

The Interveners, Crofton Diesel Engine Company, Inc., a California corporation, and Al Larson Boat Shop, a California corporation, respectfully pray that they may be permitted to take an appeal from the Final Decree, and the whole thereof, entered in the above-entitled matter by the above Court, on the 8th day of October, 1951, to the United States Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors, which is filed herewith, and that a citation may issue.

Dated at San Pedro, California, this 25th day of October, 1951.

EKDALE &
SHALLENBERGER,

By /s/ ARCH E. EKDALE,
Proctors for Interveners.

Affidavit of Service by mail attached.

[Endorsed]: Filed October 29, 1951. [144]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes Now, the Interveners, Crofton Diesel Engine Company, Inc., a California corporation, and Al Larson Boat Shop, a California corporation, and make the following assignment of [146] errors:

I.

The District Court erred in finding that it is true that the Mortgage of the Libelant, Puget Sound National Bank of Tacoma, a national banking corporation, did not stipulate that the Mortgagee waived the preferred status thereof.

II.

The District Court erred in finding that it is true that the Mortgage of Kazulin Cole Shipbuilding Corporation, assigned to the Libelant, did not stipulate that the Mortgagee waived the preferred status thereof.

III.

The District Court erred in not finding that the Mortgagee, Puget Sound National Bank of Tacoma, a national banking corporation, and the Mortgagee, Kazulin Cole Shipbuilding Corporation, had waived the preferred status of their Mortgages in so far as the maritime liens of the mentioned Interveners were concerned.

IV.

The District Court erred in not finding that the

Puget Sound National Bank of Tacoma, a national banking corporation, and Kazulin Cole Shipbuilding Corporation, were estopped from asserting the priority of their Mortgage liens over the mentioned Interveners.

V.

The District Court erred in not finding that the Third Preferred Ship's Mortgage of Intervener, Crofton Diesel Engine Company, Inc., a California corporation, was in fact the first preferred mortgage.

VI.

The District Court erred in concluding that the liens of the Mortgagees, Puget Sound National Bank of Tacoma, a national banking corporation, and Kazulin Cole Shipbuilding Corporation, [147] were preferred to and prior to the liens of the mentioned Interveners.

Respectfully submitted,

EKDALE &
SHALLENBERGER,

By /s/ ARCH E. EKDALE,
Proctors for Interveners.

Affidavit of Service by mail attached.

[Endorsed]: Filed October 29, 1951. [148]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

The Petition of the Interveners, Crofton Diesel Engine Company, Inc., a California corporation, and Al Larson Boat Shop, a California corporation, for an appeal from the Final Decree in [150] the above-entitled cause, entered on October 8, 1951, is hereby granted, and the appeal is allowed.

Dated at Los Angeles, California, this 27th day of October, 1951.

/s/ WM. C. MATHES,

United States District Judge.

[Endorsed]: Filed October 29, 1951. [151]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Puget Sound National Bank of Tacoma, a national banking corporation, and Herbert R. Lande and Charles H. Kent, its Attorneys, and to Ets-Hokin & Galvan, and Hansen & Sweeney, its Attorneys: [152]

The Interveners, Crofton Diesel Engine Company, Inc., a California corporation, and Al Larson Boat Shop, a California corporation, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Final Decree, and the whole thereof, entered on October 8, 1951, in favor of the

Libelant and Interveners and against the Respondents.

Dated Nov. 1, 1951.

EKDALE &
SHALLENBERGER,

By /s/ ARCH E. EKDALE,
Proctors for Interveners.

Affidavit of Service by mail attached.

[Endorsed]: Filed November 2, 1951. [153]

[Title of District Court and Cause.]

CITATION

United States of America—ss.

To: Puget Sound National Bank of Tacoma, a national banking corporation, Libelant, and Ets-Hokin & Galvan, Intervener, [155]

Greeting:

You are hereby cited and admonished to be and appear at the United States Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 12th day of December, 1951, pursuant to an order allowing appeal filed on October 27th, 1951, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 12,271-WM, Central Division, wherein Crofton Diesel Engine Company, Inc., a

California corporation, and Al Larson Boat Shop, a California corporation, are Appellants, and Puget Sound National Bank of Tacoma, a national banking corporation, is Appellee, to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William C. Mathes, United States District Judge for the Southern District of California, this 2nd day of November, A.D. 1951, and of the Independence of the United States, the 175th.

/s/ WM. C. MATHES,
United States District Judge for the Southern District of California.

Service of a copy of the foregoing Citation is acknowledged this 8th day of November, 1951.

HERBERT R. LANDE and
CHAS. H. KENT,

By /s/ HERBERT R. LANDE,

R. D. SWEENEY,

By /s/ JOHN R. Y. LINDLEY.

[Endorsed]: Filed November 15, 1951. [156]

[Title of District Court and Cause.]

STIPULATION

It is agreed that the attached Statement, "Agreed Statement of Facts on Appeal in Lieu of Reporter's Transcript," is agreed to in fact and is to be used in lieu of the Reporter's transcript; [157] that the designation of record shall consist of all pleadings, orders and decrees, inclusive of interrogatories and answers to interrogatories, Requests for Admissions, and Answers thereto, the Findings of Fact and Conclusions of Law, and the following Exhibits:

- (1) Libelant's preferred ship's mortgages
- (2) The note and preferred mortgage of Crofton
- (3) The statements of account of the interested parties heretofore introduced as exhibits in the court below
- (4) Certificate of Ownership.

Dated December . . , 1951.

HERBERT R. LANDE and
CHARLES H. KENT,

By /s/ HERBERT R. LANDE,
Proctors for Libelant.

HANSEN & SWEENEY,

By /s/ JOHN R. Y. LINDLEY,
Proctors for Ets-Hokin &
Galvan.

EKDALE, SHALLENBERGER
& TONER,

By /s/ GORDON P.

SHALLENBERGER,

Proctors for Crofton Diesel Engine Company, Inc.,
and Al Larson Boat Shop. [158]

[Title of District Court and Cause.]

AGREED STATEMENT OF FACTS ON AP-
PEAL IN LIEU OF REPORTER'S TRAN-
SCRIPT

The above-entitled matter came on regularly for trial as to all parties, except Intervener, John Marumoto, on July 9, 1951, default of Respondents, Peter Radic and John Kremenec, having been [159] entered. The claim of Intervener, John Marumoto, has since been disposed of out of court and is of no concern in this appeal.

The Respondent Vessel, the Oil Screw Flying Cloud, was at all times an American fishing Vessel, duly enrolled and documented under the laws of the United States at Tacoma, State of Washington, and that the Home Port of said vessel was Tacoma, Washington; that said vessel was owned fifty per cent (50%) by Peter Radic and fifty per cent (50%) by John Kremenec.

That on August 18, 1948, said Peter Radic and John Kremenec executed their promissory note in the sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) to the Libelant, who was at

that time and still is a national banking corporation and a citizen of the United States, payable on October 31, 1949, with interest at five per cent (5%) per annum, and providing for attorney's fees, etc., as will more fully appear from the said note itself, designated as part of the record and incorporated herein by reference.

That on August 18, 1948, the said Peter Radic and John Kremenec executed a mortgage upon the whole of said vessel Flying Cloud in favor of Libelant, to secure the payment of said note for Twenty-Five Thousand and No/100 Dollars (\$25,000.00); that said mortgage provided that it was also given to secure the terms of the said promissory note; that said mortgage contained other provisions as will more fully appear from the said mortgage itself, designated as a part of the record and incorporated herein by reference.

That the sum of Four Thousand Seven Hundred Thirty-Two and 60/100 Dollars (\$4,732.60) has been paid upon the principal of said note, and that the balance due, owing and unpaid is Twenty Thousand Two Hundred Sixty-Seven and 40/100 Dollars (\$20,267.40); that interest on said note has been paid to October 31, 1949; that interest from November 1, 1949, to June 30, 1951, amounts to One Thousand Six Hundred Eighty-Eight and 95/100 Dollars (\$1,688.95), [160] and that said interest is due, owing and unpaid to the Libelant.

That said mortgage on the Respondent Vessel was recorded at Tacoma, State of Washington, on August 18, 1948, by the Collector of Customs at

Tacoma; that said mortgage was endorsed on the outstanding document of said vessel on August 24, 1948, by the Collector of Customs at Los Angeles, State of California, by request of the Collector of Customs at Tacoma, Washington, and that an affidavit was made by Peter Radic and John Kremenec and filed with the record at Tacoma, that the said mortgage was made in good faith.

That on August 18, 1948, said Peter Radic and John Kremenec executed their promissory note in the sum of Ten Thousand and No/100 Dollars (\$10,000.00) to the Kazulin Cole Shipbuilding Corporation, payable on November 30, 1949, with interest at six per cent (6%) per annum, and providing for attorney's fees, etc., as will more fully appear from the said note itself designated as part of the record and incorporated herein by reference.

That on August 18, 1948, the said Peter Radic and John Kremenec executed a mortgage upon the whole of said Vessel Flying Cloud in favor of the Kazulin Cole Shipbuilding Corporation, at all times a citizen of the United States, to secure the payment of said note for Ten Thousand and No/100 Dollars (\$10,000.00); that said mortgage provided that it was also given to secure the terms of said promissory note.

That no sum has been paid upon the principal of said note, and that the balance due, owing and unpaid is Ten Thousand and No/100 Dollars (\$10,000.00); that interest on said note has been paid to November 30, 1949; that interest from December 1, 1949, to June 30, 1951, amounts to Nine Hundred

Fifty and No/100 Dollars (\$950.00); and that said interest is due, owing and unpaid to the Libelant.

That said mortgage on the Respondent vessel was recorded [161] at Tacoma, State of Washington, on August 19, 1948, by the Collector of Customs at Tacoma; that said mortgage was endorsed on the outstanding document of said vessel on August 24, 1948, by the Collector of Customs at Los Angeles by request of the Collector of Customs at Tacoma, Washington; and that an affidavit was made by Peter Radic and John Kremenec and filed with the record of the mortgage at Tacoma, that the said mortgage was made in good faith.

That on October 19, 1949, the said Kazulin Cole Shipbuilding Corporation assigned said preferred mortgage to the Libelant herein, and that said assignment was recorded at the Custom House, Tacoma, Washington, on March 23, 1950, and that said assignment was endorsed on the document of the Respondent Vessel on March 24, 1950, by the Collector of Customs at Los Angeles, by request of the Collector of Customs at Tacoma, Washington.

That on May 9, 1950, said Peter Radic and John Kremenec executed their promissory note in the sum of Six Thousand Five Hundred and No/100 Dollars (\$6,500.00) to Intervener, Crofton Diesel Engine Company, Inc., a corporation, who was at that time and still is a citizen of the United States, payable on or before May 1, 1952, with interest at six per cent (6%) per annum, and providing for attorney's fees, etc., as will more fully appear from

the said note itself, designated as part of the record and incorporated herein by reference.

That on May 9, 1950, the said Peter Radic and John Kremenec executed a third mortgage upon the whole of said vessel Flying Cloud in favor of Intervener, Crofton Diesel Engine Company, Inc., to secure the payment of said note for Six Thousand Five Hundred and No/100 Dollars (\$6,500.00); that said mortgage provided that it was also given to secure the terms of the said promissory note; that said mortgage contained other provisions as will more fully appear from the said mortgage itself, designated as a part of the record and incorporated herein by reference. [162]

That no sums have been paid upon the principal of said note; that said Intervener, Crofton Diesel Engine Company, Inc., furnished supplies and materials to the Mortgagors, Peter Radic and John Kremenec, in the sum of Two Hundred Twenty-Nine and 27/100 Dollars (\$229.27), no part of which has been paid; that there is due, owing and unpaid to Intervener, Crofton Diesel Engine Company, Inc., the sum of Six Thousand Seven Hundred Twenty-Nine and 27/100 Dollars (\$6,729.27); that no sums have been paid upon the interest of said note; that interest to June 30, 1951, amounts to Five Hundred Twelve and 50/100 Dollars (\$512.50), and that said interest is due, owing and unpaid to said Intervener.

That said third mortgage to Intervener, Crofton Diesel Engine Company, Inc., was recorded in the Office of the Collector of Customs at Tacoma, Wash-

ington, on May 29, 1950, and was endorsed on the outstanding document of the respondent vessel; that an affidavit of good faith was made by Peter Radic and John Kremenec and filed with the said record of said mortgage.

That the reasonable value of the services of the proctors for the Libelant herein is the sum of Three Thousand Five Hundred and No/100 Dollars (\$3,500.00).

That the reasonable value of the services of the proctors for the Intervener, Crofton Diesel Engine Company, Inc., is the sum of Six Hundred Seventy-Five and No/100 Dollars (\$675.00).

That Intervener, Al Larson Boat Shop, furnished work and materials to the Respondent Vessel for current operations and repairs in the sum of Three Thousand Four Hundred Ninety-Seven and 76/100 Dollars (\$3,497.76), of which Three Hundred and No/100 Dollars (\$300.00) was paid on March 1, 1950, and that Three Thousand One Hundred Ninety-Seven and 76/100 Dollars (\$3,197.76) is now due, owing and unpaid said Intervener.

That Intervener, Ets-Hokin & Galvin, furnished labor and material to the Respondent Vessel for current operations and [163] repairs in the sum of Eight Hundred Sixty-Seven and 92/100 Dollars (\$867.92), no part of which has been paid and which is now due, owing and unpaid said Intervener.

That the sequence of supplies, materials and labor furnished to the said Respondent Vessel by the Interveners was as follows:

Furnished After Date of Libelant's Mortgages:

(a)	Al Larson Boat Shop.....	\$1,013.06
(b)	Ets-Hokin & Galvan.....	35.97
(c)	Crofton Diesel Engine Company, Inc	229.27
(d)	Ets-Hokin & Galvan.....	808.80
(e)	Al Larson Boat Shop.....	1,664.89

Furnished After Mortgage of Intervener, Crofton Diesel Engine Company, Inc.:

(f)	Al Larson Boat Shop.....	\$455.14
(g)	Al Larson Boat Shop.....	59.55
	and	
	Ets-Hokin & Galvan.....	23.15
	furnished contemporaneously	
(h)	Al Larson Boat Shop.....	5.12

Dated: December....., 1951.

HERBERT R. LANDE and
CHARLES H. KENT,

By /s/ HERBERT R. LANDE,
Proctors for Libelant.

HANSEN & SWEENEY,

By /s/ JOHN R. Y. LINDLEY,
Proctors for Ets-Hokin &
Galvan.

EKDALE, SHALLENBERGER
& TONER,

By /s/ GORDON P. SHALLEN-
BERGER,
Proctors for Crofton and
Larson.

[Title of District Court and Cause.]

AFFIDAVIT OF
GORDON P. SHALLENBERGER

State of California,
County of Los Angeles—ss.

Gordon P. Shallenberger, being first duly sworn,
deposes and says: [165]

That he is one of the proctors for the Interveners,
Crofton Diesel Engine Company, Inc., and Al Lar-
son Boat Shop, in the above-entitled matter; that
your Affiant is advised by the office of the Clerk of
the above-entitled Court that it will be necessary
to have a thirty-day extension of time within which
to file the Apostles on Appeal in the above-entitled
case.

Wherefore, Affiant requests that the above Court
make an Order extending the time within which
to file the Apostles on Appeal in the above matter
to and including the 11th day of January, 1952.

/s/ GORDON P.
SHALLENBERGER.

Suscribed and sworn to before me this 10th day
of December, 1951.

[Seal] /s/ I. G. PIEPER,
Notary Public in and for the County of Los An-
geles, State of California,

Affidavit of service by mail attached.

[Endorsed]: Filed December 11, 1951. [166]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
APOSTLES ON APPEAL

Upon application of Gordon P. Shallenberger, one of the Proctors for Interveners, Crofton Diesel Engine Company, Inc., and Al Larson Boat Shop, and good cause appearing therefor, [168]

It Is Hereby Ordered, that Interveners, Crofton Diesel Engine Company, Inc., and Al Larson Boat Shop, have to and including the 11th day of January, 1952, within which to file the Apostles on Appeal in the above matter.

Dated: December 11th, 1951.

/s/ LEON R. YANKWICH,

Judge of the United States
District Court.

Affidavit of service by mail attached.

[Endorsed]: Filed December 11, 1951. [169]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 170, inclusive, contain the original Libel; Libel in Intervention; Answer of Crofton

Diesel Engine Company, Inc., et al., to Libel with Attached Interrogatories; Separate Answers of Libelant to Interrogatories; Separate Interrogatories of Libelant to Interveners; Separate Admission of Interveners Under Supreme Court Admiralty Rule 32-B; Claim; Separate Answers of Interveners to Libelant's Interrogatories; Request of Libelant for Admission Under Supreme Court Admiralty Rule 32-B; Offer to Stipulate; Libelant's Partial Acceptance of Offer to Stipulate; Request for Admission; Separate Answer of Interveners to Request for Admissions; Memorandum to Counsel; Separate Amended Answer of Interveners to Request for Admission; Order for Findings and Decree; Findings of Fact and Conclusions of Law; Interlocutory Decree; Order for Dismissal; Final Decree; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Notice of Appeal; Citation; Stipulation as to Apostles on Appeal and Agreed Statement of Facts; Affidavit of Gordon P. Shallenberger and Order Extending Time to File Apostles on Appeal which, together with original Libelant's Exhibits 6, 7, 8, 9, 10 and 11; original Crofton Exhibits A, B and C; original Ets-Hokin Exhibit A and Original Larson Exhibit A, transmitted herewith, constitute the Apostles on Appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing Apostles amount to \$2.00, which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 7 day of January, A.D. 1952.

[Seal]: EDMUND L. SMITH,
 Clerk.

By /s/ THEODORE HOCKE,
 Chief Deputy.

[Endorsed]: No. 13225. United State Court of Appeals for the Ninth Circuit. Crofton Diesel Engine Company, Inc., a corporation, and Al Larson Boat Shop, a corporation, Appellants, vs. Puget Sound National Bank of Tacoma, a corporation, and Ets-Hokin & Galvin, Appellees. Apostles on Appeal. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed January 8, 1952.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
 the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 13225

CROFTON DIESEL ENGINE COMPANY,
INC., a California Corporation, and AL LAR-
SON BOAT SHOP, a California Corporation,
Appellants,

vs.

PUGET SOUND NATIONAL BANK OF TA-
COMA, a National Banking Corporation,
Appellee.

APPELLANTS' STATEMENT OF POINTS

The following is a statement of the points upon which Appellants intend to rely upon their appeal herein:

1. The District Court erred in finding that the mortgages held by Appellee were preferred mortgages.

2. The District Court erred in finding that Appellee did not, by the terms of their mortgages, waive the preferred status of said mortgages.

3. The District Court erred in not finding that Appellant Crofton Diesel Engine Company, Inc., had a valid maritime lien for goods, wares and services to the vessel on order of the Respondent owners.

4. The District Court erred in not finding that the note and preferred mortgage held by Crofton Diesel Engine Company, Inc., was given by the

owners as security for the maritime lien for goods, wares and services furnished by Crofton Diesel Engine Company, Inc., to the boat on order of the owners.

5. The District Court erred in its conclusion of law that Appellee's mortgages and the fee of Appellee's Attorney were senior to Appellants' liens.

6. The District Court erred in its Interlocutory Decree by ordering (from the proceeds of the sale of the Respondent Flying Cloud, held in the registry of the District Court) recovery as follows:

(a) By Appellee of the sum of Twenty-Three Thousand Four Hundred Eighteen and $74/100$ Dollars (\$23,418.74) plus interest at five per cent (5%) on Twenty Thousand Two Hundred Sixty-Seven and $40/100$ Dollars (\$20,267.40) from July 1, 1951, first in order;

(b) By Appellee of the sum of Ten Thousand Nine Hundred Fifty and $No/100$ Dollars (\$10,950.00), plus interest at six per cent (6%) on Ten Thousand and $No/100$ Dollars (\$10,000.00) from July 1, 1951, second in order;

(c) By Appellee of Three Thousand Five Hundred and $No/100$ Dollars (\$3,500.00), third in order;

(d) By Appellee of taxable costs, fourth in order; and in not ordering that said recoveries were subsequent to recoveries ordered by Appellants from said proceeds.

7. The District Court erred by ordering by its Final Decree that Thirty-Nine Thousand Five Hun-

dred Three and 36/100 Dollars (\$39,503.36) be disbursed to Appellee, and Nine Hundred Seventy-One and 29/100 Dollars (\$971.29) to Appellant Al Larson Boat Shop.

8. The District Court erred in not finding that the preferred mortgage of Appellant Crofton Diesel Engine Company, Inc., was the first preferred mortgage, and junior only to:

(a) The maritime lien of Appellant Al Larson Boat Shop in the sum of One Thousand Thirteen and 06/100 Dollars (\$1,013.06);

(b) The maritime lien of Appellant Crofton Diesel Engine Company, Inc., in the sum of Two Hundred Twenty-Nine and 27/100 Dollars (\$229.27);

(c) The maritime lien of Appellant Al Larson Boat Shop in the sum of One Thousand Six Hundred Sixty-Four and 89/100 Dollars (\$1,664.89);

and senior to:

(a) The maritime lien of Appellant Al Larson Boat Shop in the sum of Fifty-Five and 14/100 Dollars (\$55.14);

(b) The maritime lien of Appellant Al Larson Boat Shop in the sum of Fifty-Nine and 55/100 Dollars (\$59.55);

(c) The maritime lien of Appellant Al Larson Boat Shop in the sum of Five and 12/100 Dollars (\$5.12);

(d) Appellee's mortgages, including the sum of One Thousand Four Hundred Sixty-

Two and 39/100 Dollars (\$1,462.39) advanced for insurance premiums and the sum of Three Thousand Five Hundred and No/100 Dollars (\$3,500.00) for Attorney's fees and taxable costs.

Respectfully submitted,

EKDALE, SHALLENBERGER
& TONER,

By /s/ G. E. TONER

Proctors for Appellants.

Service of Copy acknowledged.

[Endorsed]: Filed January 16, 1952.

[Title of Court of Appeals and Cause.]

STIPULATION AND ORDER

It Is Hereby Stipulated and Agreed by and between the respective parties, by Ekdale, Shallenberger & Toner, Proctors for the Appellants, and Herbert R. Lande and Charles H. Kent, Proctors for the Appellees, that the original Exhibits in this case need not be printed, but may be referred to by Proctors for the respective parties, and may be considered by the Court in their original form.

Dated this 14 day of January, 1952.

EKDALE, SHALLENBERGER
& TONER,

By /s/ G. E. TONER,

Proctors for Appellants.

HERBERT R. LANDE and
CHARLES H. KENT,

By /s/ HERBERT R. LANDE,
Proctors for Appellee.

Upon Stipulation of the parties, and good cause appearing therefor;

It Is Ordered that the original Exhibits in this appeal need not be printed, but may be referred to by Proctors for the respective parties, and will be considered by this Court in their original form.

Dated at San Francisco, California, this 16th day of January, 1952.

/s/ WILLIAM DENMAN,
Senior Judge of the United States Court of Appeals
for the Ninth Circuit.

/s/ WILLIAM HEALY,

/s/ HOMER T. BONE,

Judges, U. S. Court of Ap-
peals for the Ninth Circuit.

[Endorsed]: Filed January 18, 1952.

